

**MARCH 30, 1989 REGULATIONS
GOVERNING UNDERGROUND TANK TESTERS
(SUBCHAPTER 17, CHAPTER 3, TITLE 23,
CALIFORNIA CODE OF REGULATIONS)**

I. Notice of Proposed Emergency Rulemaking

a. Rulemaking Index

MARCH 30, 1989
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GOVERNING UNDERGROUND TANK TESTERS
(SUBCHAPTER 17, CHAPTER 3, TITLE 23,
CALIFORNIA CODE OF REGULATIONS)

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b. Face Sheet (Form 400)

FACE SHEET

FOR FILING ADMINISTRATIVE REGULATIONS WITH THE OFFICE OF ADMINISTRATIVE LAW

CERTIFICATION: I hereby certify that the attached are true and correct copies of regulations adopted, amended or repealed by this agency and that the information specified on this Face Sheet is true and correct.

State Water Resources Control Board

(AGENCY)
JAMES W. BAETGE *James W. Baetge*
AGENCY OFFICER WITH RULEMAKING AUTHORITY

Date: *12-20-89*

For use of Office of Adm Law

For use by Secretary of State only

1. AGENCY CONTACT PERSON FOR THIS FILING (See instructions)
James W. Baetge Executive Director (916)445-3085
2. Type of filing, (check one) ☐ 30-day Review ☒ Emergency ☐ Certificate of Compliance (Complete Part 4 below)
☐ Regulatory changes resulting from Govt. Code 11349.7 review (Complete Part 6 below)
☐ Nonsubstantive changes with nonregulatory effect ☐ Printing Error Correction
3. a. Specify California Administrative Code title and sections as follows:
Title 23
SECTIONS ADOPTED: Articles 1-8; Sections 2730 through 2802
SECTIONS AMENDED:
SECTIONS REPEALED:
b. The following sections listed in 3a contain modifications to the text originally made available to the public:
4. CERTIFICATE OF COMPLIANCE (Government Code Section 11346.1(e): The above-named agency officer certifies that this agency complied with the provisions of Government Code Sections 11346.4-11346.8. (Check one)
☐ prior to the emergency adoption
☐ within 120 days of the effective date of the emergency adoption of the above-referenced regulations.
5. Is this filing a resubmittal of a previously disapproved or withdrawn regulation?
☒ No ☐ Yes, if yes, give date(s) of prior submittal(s) to OAL:
6. Is the filing submitted to carry out amendments or repeals identified in the statement of review completion submitted as a result of the agency's review of regulations administered by it as of June 30, 1980?
☒ No ☐ Yes, if yes, give date statement was submitted to OAL
7. If these regulations required prior review and approval or concurrence by any of the following agencies, check appropriate box(es)
☐ Fair Political Practices Commission (Include FPPC approval stamp) ☐ Building Standards Commission (Attach approval)
☐ State Fire Marshall (Attach approval) ☐ Department of Finance (Attach properly signed Std. 399)
☐ Other _____ (SPECIFY AGENCY)
8. a. PUBLICATION DATE OF NOTICE IN CALIFORNIA ADMINISTRATIVE NOTICE REGISTER
b. DATE OF FINAL AGENCY ACTION
December 15, 1988
c. DATES OF AVAILABILITY OF MODIFIED REGULATION(S) (GOVT. CODE SEC. 11346.8(c))
9. Effective date of regulatory changes: (See Government Code Section 11346.2 and instructions on reverse)
a. ☐ Effective 30th day after filing with the Secretary of State.
b. ☒ Effective upon filing with the Secretary of State.
c. ☐ Effective on _____ as required or allowed by the following statute(s):
d. ☐ Effective on _____ (Designate effective date *earlier than* 30 days after filing with the Secretary of State pursuant to Govt. Code Sect. 11346.2(d).)
Attach request demonstrating good cause for early effective date. Request subject to OAL approval.
e. ☐ Effective on _____ (Designate effective date *later than* the normal effective date for the type of order filed.)

INSTRUCTIONS FOR STD 400

Completed Face Sheet for Filing Regulations with the Office of Administrative Law must be attached to the front of each of the seven copies of the regulations. Note that at least one Face Sheet must contain an original signature of the agency officer with rulemaking authority.

Part 1. Provide the name and telephone number of the person who is authorized during the review period to answer questions regarding this regulatory filing. If different than person designated in certification box, attach order delegating authority for making decisions regarding these regulations.

Part 2. Check the appropriate box. NOTE: Nonsubstantive changes are reviewed by and are subject to OAL approval.

Part 3 a. Provide the Administrative Code Title in which the regulation will appear and list *section* number of each regulation to be amended, adopted or repealed. *When filing a Certificate of Compliance list the section number of each emergency regulation formally adopted after completion of the rulemaking procedures of the APA.* (Attach additional sheets if necessary.)

b. Please list the section number of each regulation which includes modifications to the text to the regulations originally made available to the public pursuant to Government Code Section 11346.5(b), and adopted, amended or repealed as modified pursuant to Government Code Section 11346.8(c). The sections listed here must correspond to the sections which were made available for 15 days pursuant to Government Code Section 11346.8(c).

Part 4. Check appropriate box as necessary to comply with the requirements of Government Code Section 11346.1(e).

Part 5. Specify date(s) and file number(s) of each prior submittal of these regulatory changes which was withdrawn or disapproved.

Part 6. OAL has a longer time period to review regulatory changes submitted to carry out amendments and repeals which are identified in the agency's Statement of Review Completion and which have been submitted as a result of the agency's review of regulations administered by it as of June 30, 1980. Therefore, these regulatory changes should be submitted in a separate filing from any other regulatory changes. If not submitted separately, regulations not resulting from the review and any material in the rulemaking file relating to them must be clearly identified.

Part 7. Certain regulatory activities must be reviewed and approved by other state agencies prior to submittal to OAL. Regulations subject to prior approval include:

- a. Fire and panic safety regulations (Govt. Code Sec. 11342.3.).
- b. Building standards as defined in Section 18909 of the Health and Safety Code (Govt. Code Sec. 11343).
- c. Conflict of Interest regulations (Title 2 California Admin. Code Section 18750(i)).

Note: Where regulations have a fiscal impact on state, local or federal government or result in reimbursable costs to local government or school districts the fiscal impact statement must be reviewed, approved and signed by the Department of Finance before the regulations will be accepted for filing by OAL. See Government Code Sections 11349.1, 11346.5(a)(6), and S.A.M. sections 6050-6057.

Part 8 a. Provide the publication date of the Notice Register in which the notice of proposed action appeared.

b. Provide the date on which the regulatory agency adopted the regulatory changes.

c. If the regulations were modified subsequent to the hearing or written comment period, provide the dates during which the modified regulations were made available to the public. Note that period must be at least 15 days and must be completed prior to the date the agency adopts the modified text. All modifications must be clearly indicated.

Part 9. Effective Dates — check one of the following:

- a. A regulation or order of repeal is effective 30 days after filing with the Secretary of State unless a different date is specified below.
- b. An emergency order, Certificates of Compliance or nonsubstantive change is effective upon filing with the Secretary of State unless a later date is specified below.
- c. If an effective date other than specified above is required or allowed by statute, provide the date and the statutory citations(s).
- d. If an early effective date is being requested, please attach a letter specifying the date the regulation(s) should take effect and the reason for the early effective date. Requests are granted by OAL upon a showing of good cause.
- e. If an effective date later than specified above is requested, provide the date.

FILING REQUIREMENTS

The following material must be submitted when filing regulations with OAL:

- *Seven (7) copies of the regulations.* Note: Use underline and strikeout to indicate changes in an existing section. For adoption of a new section, underline new text. The repeal of an entire section may be indicated by placing a diagonal slash through the text to be repealed.
- *A completed Face Sheet for filing regulations with the Office of Administrative Law, Form STD 400* attached to the front of each copy of the regulations, with at least one Face Sheet bearing an original signature.
- *Complete rulemaking file, with index and sworn statement.* (See Govt. Code Sec. 11347.3 for full list of rulemaking contents.)

c. Finding of Emergency

TANK TESTER LICENSE REGULATIONS

FINDING OF EMERGENCY

Section 25284.4 of the Health and Safety Code directs the State Board to adopt any emergency regulations necessary to implement the tank tester licensing program. Section 11346.1(b) of the Government Code states that any finding of emergency shall include a written statement containing the information requested in Section 11346.5(a) of the Government Code and a description of the specific facts showing the need for immediate action.

The following numbered statements correspond to and provide the information requested Section 11346.5(a):

- (2) "Reference to the authority under which the regulation is proposed and the reference to the particular code sections or other provisions of law which are being implemented, interpreted, or made specific."

Section 25284.4 was added to Chapter 6.7 of the Health and Safety Code by Chapter 1372, Statutes of 1987 (AB 1413, Cortese).

- (3) "An informative digest containing a concise and clear

summary of existing laws and regulations..."

The Informative Digest is attached.

- (4) "Any other matters as are prescribed by statute applicable to the specific state agency or to any specific regulation or class of regulations".

None.

- (5) "Determination as whether the regulation imposes a mandate on local agencies or school districts and, if so, whether the mandate requires state reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4.)"

The Mandate on Local Agencies or School Districts is attached.

- (6) "An estimate, prepared in accordance with instructions adopted by the Department of Finance, of the cost or savings to any state agency, the cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4, other nondiscretionary cost or savings

imposed on local agencies, and the cost or savings in federal funding to the state."

Standard Form 399 entitled Fiscal Impact Statement (Regulations and Orders) is attached.

The proposed regulations must be adopted immediately to protect the environment from substances hazardous to the public health and safety, and which are stored prior to use or disposal in thousands of underground locations in the state. Underground tanks used for the storage of hazardous substances and wastes are potential sources of contamination of the ground and underlying aquifers, and may pose other dangers to public health and the environment. In several known cases, underground storage has resulted in undetected and uncontrolled releases of hazardous substances into the ground. These releases have contaminated public drinking water supplies and created a potential threat to the public health and to the waters of the state. The protection of the public from releases of hazardous substances is an issue of statewide concern.

Adequate testing of underground storage tanks is an essential part of a program to prevent release of hazardous substances. Local city and county agencies were surveyed in 1987 regarding underground storage tank testing in their jurisdictions. The majority of the agencies that responded (67) indicated many

problems with the performance of tank testers. These problems can compromise the results of the tests by indicating that a tank is leaking when it is not or failing to identify leaking tanks. In fact, because of costly errors in tank testing methods, more than one local agency has adopted a resolution or enacted an ordinance which states that the agency will not require tank testing until tank testers are licensed by the State Water Resources Control Board. These local ordinances are not in compliance with state laws governing underground storage tanks and they underline the fact that there are serious problems with current tank tester performance.

Licensing underground tank testers and ensuring that testers have adequate knowledge and experience to properly perform the required tests is a major step in protecting the public from the threat to public health which can result from releases of hazardous substances. Therefore, the proposed regulations must be adopted as emergency regulations for the immediate preservation of the health and general welfare of the public.

d. Informative Digest

INFORMATIVE DIGEST

Section 25284.4 was added to Chapter 6.7 of the Health and Safety Code by Chapter 1372, Statutes of 1987 (AB 1413, Cortese). Under Section 25284.4, the Board is vested with responsibility for the administration of the Tank Tester Licensing Program. Specifically, the State Board must protect the environment and public health and safety by certifying the qualifications and competency of individuals testing underground storage tanks.

Section 25284.4 requires all tank integrity tests to be conducted by, or under the direct and personal supervision of, licensed tank testers on and after January 1, 1989. Section 25284.4(a) of the Health and Safety Code permits an extension of the licensing deadline to January 1, 1990 to allow tank testers a reasonable opportunity to qualify for licensure. Section 25284.4(e) of the Health and Safety Code directs the State Board to adopt any emergency regulations necessary to implement tank tester licensing.

Summary of Proposed Regulations

Article 1. General Provisions

The regulations implement, interpret, and make specific the provisions of Section 25284.4 of the Health and Safety Code. The regulations also include definitions for the terms used in the regulations and in statute.

Article 2. Administration

Under this Article, the State Board is required to keep records regarding all licensed tank testers and any enforcement actions taken against them. The State Board must furnish lists of new licensees to all local agencies after each examination and licensing process. It must also make lists of enforcement actions available upon request and payment of a duplication fee.

Article 3. Application of Regulations

Persons who conduct or directly supervise underground storage tank tests on and after January 1, 1990, must be licensed by the Board.

Local agencies may require tank testers to file a copy of their Board-issued license with the local agency, but may not require an application or fee for such filing. They may require a local business permit.

Article 4. Licensing

Applicants for a tank tester license must possess a manufacturer's certificate of completion of training and must have completed either a minimum of one year of qualifying experience or an approved course of study. They must file an application and fee, include two color photographs, and pass an examination administered by the Board.

This Article specifies the: (a) content of the application and examination; (b) timeframe in which the application must be filed; (c) nature of the Board's review and notice to the applicant; (d) confidentiality of the application content; (e) provisions for abandonment of the application; (f) examination frequency; (g) penalties for dishonest conduct during an examination; (h) provisions for re-examination after failure; (i) issuance of an initial license, renewal or reinstatement; (j) licensee's responsibility if the license is expired, suspended or revoked; (k) prohibition against assignment of licenses; and (l) license denial.

Article 5. Conduct of Business and Prohibited Acts

Licensees are required to: a) notify the Board of any change of residence address or address of record within 30 days of the change; (b) be responsible for the conduct of those who perform tank tests under the licensee's direct and personal supervision; (c) keep records for three years regarding each underground storage tank owner, the results of tank tests, and the names and dates of service of those working under the licensed tank tester; and (d) have completed training resulting in a certificate of completion of training from a manufacturer.

This Article states that the Board may take civil and administrative action against a tank tester for violating or causing another to violate any of the regulations; failing to exercise direct and personal control over an unlicensed employee; using any method or equipment which is unsafe or for which the licensee has not received a certificate of completion of training from the manufacturer; submitting false information on an application for license or engaging in fraudulent activity during an examination; and using fraud or deception in the course of business. In addition, sanctions may be imposed for failure to: use care or good judgment while performing tank integrity tests; maintain competence; use proper tests; notify the Division of an address change; include the licensee's name, address, and license

number in advertising; possess a license while on duty; and maintain records. Violation of Section 17500 of the Business and Professions Code and the misreading or misinterpretation of test results may also result in sanctions.

Article 6. Protests and Appeals

Licenses and applicants may appeal any decisions made by the Office of Tank Tester Licensing by sending a written request to the Division Chief within 30 days of the disputed decision. The Division Chief then makes the final division determination. If the final determination is disputed, an appeal may be made to the Board. The requirements for making an appeal to the Board are specified as well as the results of defective petitions.

Article 7. Disciplinary Proceedings

This Article specifies the grounds for disciplinary action against an applicant or licensee including, denial, suspension, probation, revocation, or monetary civil and administrative sanctions.

Article 8. Revenue

Section 25284.4(b) of the Health and Safety Code provides for the collection of fees for the licensure of tank testers. The regulations establish the following fees for the licensure of tank testers: application fee of \$100; examination fee of \$200; license fee of \$600; reexamination fee of \$200; license renewal fee of \$600; license reinstatement fee of \$200; duplicate license fee of \$10; certified copy of any license fee of \$5; and dishonored check processing fee of \$15.

Dated:

STATE WATER RESOURCES CONTROL BOARD

TMICKA/BWIGHTMAN/tm/bw

FILE NAME: DIGEST.1

DISK: C

01/05/89, 739-2494

e. Mandate on Local Agencies
or School Districts

Mandate on Local Agencies or School Districts

A mandate is not imposed on Local Agencies or School Districts.

f. Text of Regulations as
Adopted by the Board December
15, 1988

CALIFORNIA CODE OF REGULATIONS

TITLE 23 WATERS

CHAPTER 3 WATER RESOURCES CONTROL BOARD

SUBCHAPTER 16 UNDERGROUND TANK TESTER REGULATIONS

Adopted December 15, 1988

- Article 1. General Provisions
- Article 2. Administration
- Article 3. Application of Regulations
- Article 4. Licensing
- Article 5. Conduct of Business and Prohibited Acts
- Article 6. Protests and Appeals
- Article 7. Disciplinary Proceedings
- Article 8. Revenue

UNDERGROUND TANK TESTER REGULATIONS

CALIFORNIA CODE OF REGULATIONS

TITLE 23 WATERS

SUBCHAPTER 16 UNDERGROUND TANK TESTER REGULATIONS

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ARTICLE 1. GENERAL PROVISIONS

Adopt new section to read:

2730 Purpose

The Board is vested with all the functions and duties relating to the administration of the Tank Tester License Program (Section 25284.4 Health and Safety Code).
Specifically, the purpose of the Tank Tester License Program is to protect the environment and public health and safety by establishing minimum qualifications for those who test underground storage tanks and by establishing a licensing program for underground storage tank testers.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

Adopt new section to read:

2731 Definitions

- (a) "Address of record" means the address at which the licensee wishes to be contacted by the Board. The address of record is public information.
- (b) "Advertisement" means any written or printed communication, for the purpose of soliciting, describing, or promoting the licensee's business including a brochure, letter, pamphlet, newspaper, periodical, publication or other writing. Advertisement includes a radio, television, or similar airwaves transmission which solicits or promotes the licensee's business. It does not include:

 - (1) a free directory listing which does not allow space for a license number;
 - (2) any printing or writing on buildings or vehicles where the purpose of the printing is identification;

(3) any printing or writing or communications, memoranda, or any other writing used in the ordinary course of business where the purpose of the writing is other than solicitation or promotion of business.

(c) "Applicant" means any person seeking a tank tester license.

(d) "Approved course of study" means a course of study approved by the Division after being recommended by a committee appointed by the Division and which includes, but is not limited to:

(1) General principles of tank and pipeline testing.

(2) Basic understanding of the mathematics relating to tank testing.

(3) Understanding of test procedures, principles, and equipment.

(4) Knowledge of the regulations and laws governing the regulation of underground storage tanks.

(5) Proper safety procedures.

(6) Hands-on use of tank testing equipment.

Anyone who desires to offer an approved course of study shall submit to the Division a completed form provided by the Division.

(e) "Assign" means to permit an employee or agent in his or her own name to advertise, engage clients, furnish reports, or present bills to clients, or in any manner whatsoever to conduct business for which a license is required under these regulations.

(f) "Board" as used in these regulations means the five members of the State Water Resources Control Board.

(g) "Direct and personal supervision" means the watchful care and inspection of the conduct and performance of a tank tester by a licensee while the licensee is physically located at the work site.

(h) "Division" means the Division of the Board in which the Office of Tank Tester Licensing is located.

(i) "Fraud" or "deception" includes but is not limited to:

(1) knowingly making a false statement relating to the results of a tank test or methods or information obtained in the course of employment;

(2) manufacturing evidence;

(3) making a representation that any part of a tank testing method or associated equipment is certified, approved, or in any way sanctioned by the Board unless the method or equipment is actually certified, approved, or sanctioned by the Board;

(4) failing to provide the services for which compensation has been received or which were agreed to by contract.

(j) "License" means a pocket card issued by the Board which authorizes the licensee to conduct the business of an underground storage tank tester. The license shall include but not be limited to the following:

- (1) a clear, full-face, one inch by one inch color photograph taken within one year immediately preceding the date of filing the application;
- (2) the name of the licensee;
- (3) the address of record of the licensee;
- (4) the license number;
- (5) the expiration date of the license.

The license is the property of the Board.

- (k) "Licensee" means any person licensed under these regulations as a tank tester and who possesses a current and valid license issued by the Board.
- (l) "Local agency" means the department, office, or other agency of a county or city designated pursuant to Section 25283 of the Health and Safety Code.
- (m) "Manufacturer" means any business which produces and sells tank testing equipment and which may provide training in the use of that equipment.

(n) "Office of Tank Tester Licensing" means the unit of the Division which exercises the day-to-day functions of the Division in the Underground Tank Tester License Program.

(o) "Qualifying Experience" means, prior to January 1, 1990, experience in all aspects of tank testing including setting up and operating equipment, collecting data and producing reports, after successfully completing training and receiving a certificate of completion of training from a manufacturer in the appropriate test procedures. On and after January 1, 1990, "qualifying experience" means experience in all aspects of tank testing including setting up and operating equipment, collecting data and producing reports under the direct and personal supervision of a licensed tank tester, during which time training is successfully completed and a certificate of completion of training is received from a manufacturer in the appropriate test procedures.

(p) "Tank integrity test" means a test method capable of detecting an unauthorized release from an underground storage tank consistent with the minimum standards adopted by the Board.

(g) "Tank tester" means an individual who performs tank integrity tests on underground storage tanks.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

ARTICLE 2. ADMINISTRATION

Adopt new section to read:

2740 Record of licensees and enforcement actions

The Office of Tank Tester Licensing shall maintain a current list of all licensed tank testers, including a record of enforcement actions taken. A roster shall be prepared showing names, addresses, and telephone numbers of record of all licensees and any enforcement actions completed. The telephone number may be omitted from the directory upon request of the licensee. One copy of the current roster of licensees shall be furnished to all local agencies after each examination administration. Additional copies of the roster of licensees shall be available to local agencies and the public on application to the Office of Tank Tester Licensing, at a price per copy sufficient to reimburse the Board for the cost of publication. A roster of enforcement actions completed will be available upon request at a price per copy sufficient to reimburse the Board for the cost of publication.

All records of the Board pertaining to licensees shall be public records except confidential letters of reference,

application information, examination material, investigation files, and those documents exempt pursuant to the Information Practices Act [Chapter 1 (commencing with Section 1798 of Title 1.8 of Part 4 of Division 37 the Civil Code)] and the Public Records Act [Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code].

Authority: H&SC 25284.4

Reference: H&SC 25284.4

ARTICLE 3. APPLICATION OF REGULATIONS

Adopt new section to read:

2750 Necessity of license

On and after January 1, 1990 all tank tests conducted within this state, as defined in Section 2731 of Article 1, must be performed by or under the direct and personal supervision of a tank tester with a currently valid tank tester license issued pursuant to these regulations. No person shall be licensed unless that person meets requirements as specified in Article 4 of these regulations.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

Adopt new section to read:

2751 Local regulation; ordinances

The provisions of these regulations shall not prevent the local authorities of any city, and/or county from: (a) requiring tank tester licensees to meet the requirements for and obtain a local business permit; (b) requiring licensees

to register their name and file a copy of their Board-issued tank tester license with the city and/or county. No fee, other than a fee for a local business permit, may be charged nor may any application be required by the city and/or county for that registration.

Authority: H&SC 25284.4

Reference: H&SC 25299.2

ARTICLE 4. LICENSING

Adopt new section to read:

2760 License requirements

An applicant for a tank tester license shall:

- (a) demonstrate a minimum of either one year of verifiable qualifying experience testing at least fifty underground storage tanks or have successfully completed both an approved course of study as defined in Section 2731 of Article 1 and training resulting in a certificate of completion of training from a manufacturer in the test procedure to be used;
- (b) for an applicant applying to take an examination during the 1989 calendar year, the applicant may document in the application specified in Subsection (c) that he or she will have completed the qualifying experience requirement prior to being issued a license on January 1, 1990. The Division may require the applicant to verify completion of qualifying experience prior to issuing a license;

- (c) file with the Division a completed application as specified in Section 2761;
- (d) pay the nonrefundable application fee and the examination fee as specified in Section 2800 of Article 8;
- (e) provide two color photographs as specified in Section 2731 of Article 1;
- (f) pass an examination administered under the direction of the Division as specified in Section 2762;
- (g) pay the license fee as specified in Section 2800 of Article 8 upon notification by the Division;
- (h) not have been found guilty or have had disciplinary action taken by any local, state or federal agency for any action directly related to the functions and duties of a tank tester.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

Adopt new section to read:

2761 Application for licensure

- (a) Content - An application shall be completed on a form provided by the Division and shall include but not be limited to:
- (1) the full name and the business and residence address of the applicant and the name under which the applicant does business;
 - (2) a statement signed under penalty of perjury, verifying the applicant's qualifying experience as specified in Section 2760 (a) and (b) or a certificate of satisfactory completion of a course of study approved by the Division;
 - (3) a certificate from a manufacturer certifying that the applicant was trained in the principles and use of the equipment and method which the applicant used to gain his or her qualifying experience;
 - (4) original signature and date the application was signed;

(5) the nonrefundable application fee and the examination fee as specified in Section 2800 of Article 8.

(6) The Division may require the submission of any additional pertinent information, evidence, statements, or documents which would support the application for licensure.

A completed application is an application that meets all of the above requirements.

(b) Submittal - An application shall be postmarked by the final filing date set forth in the examination information and schedule. Applications postmarked after the final filing date may be held over and processed for the next scheduled examination.

(c) Review - The Division shall review the application and supporting documents to determine the applicant's eligibility for licensure.

(d) Notice - The Division shall notify applicants in writing within thirty (30) days of receipt of an application whether the application is complete and

approved or deficient and disapproved. Such notice, if it indicates a deficiency, will state the specific information which is required to complete the application. If the application is deficient, the applicant may be scheduled for the next examination upon completion of the application.

(e) Confidential information - The application shall be confidential pursuant to the Information Practices Act [Chapter 1 (commencing with Section 1798 of Title 1.8 of Part 4 of Division 3 of the Civil Code)] and shall not be released to the public. Section 1798.61 of the Civil Code.

(f) Abandonment - If an applicant fails to complete his or her application within one year after it has been filed, or fails to take the examination within a one-year period after becoming eligible therefore, the application shall be considered to be abandoned. An application submitted after the abandonment of a former application shall be treated as a new application and shall be required to meet all of the requirements for an initial license.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

Adopt new section to read:

2762 Examination

- (a) Content - The examination shall include: (1) general principles of tank and pipeline testing; (2) basic understanding of the mathematics relating to tank testing; (3) knowledge of the regulations and laws governing underground storage tanks; and (4) proper safety procedures.
- (b) Frequency - A minimum of two examinations shall be given each year.
- (c) Dishonest conduct during examination - An applicant for licensure as a tank tester who engages in dishonest conduct during the examination shall have his or her examination confiscated immediately and shall not have his or her examination graded and shall be denied the opportunity to take the examination at its next administration.
- (d) Confidentiality of examination questions - The Office of Tank Tester Licensing examination questions are confidential. Any person who removes all or part of any

examination from the examination room or area, or who conveys or exposes all or part of any examination to any other person may be disqualified as a candidate for the license for which the applicant applies and may be subject to administrative civil liability under Section 2773 of Article 5.

- (e) Notification of results - The Division shall notify applicants, in writing, of the results of the examination. Applicants may not review their graded examination materials pursuant to Section 6254 of the Government Code.
- (f) Failure to pass examination; reexamination fee - If an applicant fails to pass an initial examination, he or she shall be eligible for a subsequent examination upon both paying the reexamination fee and filing a completed application for reexamination within the time limits and conditions relating to applications for initial examinations provided in Section 2761.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

Adopt new section to read:

2763 Issuance of license, renewal and reinstatement

- (a) Issuance - Upon the successful completion of the application and examination process and payment of the fees prescribed by these regulations the Division shall issue a tank tester license.
- (b) Renewal of licenses; notice; payment of civil penalties -

 - (1) Except as otherwise prescribed in these regulations, the Division shall issue a renewal license upon submittal of a completed renewal application and payment of the renewal fee as prescribed in Section 2800 of Article 7. The renewal application shall be on a form provided by the Division.
 - (2) Every license issued under these regulations shall be placed on a cyclical renewal, and shall expire three years following the date of issuance or assigned renewal date. In order to implement cyclical renewal, the population of licensees shall be divided into 36 equal groups; the licenses of those in each group to expire on the last day of each successive month. The Division may extend or shorten the first

term of licensure and prorate the required license fee in order to implement this cyclical renewal.

(3) The Division shall send to each licensee a notice of renewal at least 90 calendar days prior to the expiration of each unexpired license.

(4) At least 60 days prior to the expiration, a licensee who desires to renew his or her license shall forward to the Division a completed renewal form and renewal fee as prescribed in these regulations.

(5) Neither the renewal license nor the reinstatement shall be issued until any and all penalties assessed have been paid or otherwise resolved in accordance with these regulations.

(c) Notification of expiration; cessation of display - Upon the expiration of any license issued under these regulations, the holder of the license shall cease to carry the license.

(d) Reinstatement following expiration - An expired license may be reinstated within three years of the date of expiration upon the filing a reinstatement application and payment of the renewal fee and the reinstatement fee.

A license which has been expired for more than three years may not be reinstated; the applicant must file for and meet all of the requirements for an initial license, including passage of the examination.

(e) Suspended license; expiration and renewal; restrictions on activities - A suspended tank tester license is subject to expiration and shall be renewed as provided in this article, but renewal of the license does not entitle the licensee, while the license remains suspended and until it is reinstated, to engage in the licensed activity, or in any other activity or conduct in violation of the order or judgment by which the license was suspended.

(f) Revoked license; expiration; reinstatement after expiration; fee - A revoked license may not be renewed or reinstated.

(g) Assignment - A license issued under these regulations is not assignable.

(h) License denial; grounds - A license may be denied by the Division pursuant to the conditions contained in Section 2773 of Article 5.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

ARTICLE 5. CONDUCT OF BUSINESS AND PROHIBITED ACTS

Adopt new section to read:

2770 Notice of change of address

A licensee shall notify the Division of any change of his or her residence address and address of record within 30 days after such change.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

Adopt new section to read:

2771 Liability of licensee; employee records; manufacturer's certificate of training for testing method used

(a) A licensee shall at all times be responsible for the actions of those who are under the direct and personal supervision of the licensee when such persons are acting within the course and scope of their employment, with regard to actions performed in violation of these regulations or Section 25284.4 of the Health and Safety Code.

(b) Each licensee shall maintain a record of the following information for each underground storage tank for which he or she rendered service:

(1) name, address and telephone number of tank owner or operator and dates service performed;

(2) all information and data collected and reports prepared in the course of performing service as a tank tester, including but not limited to raw data, calculations and reports.

(3) a list of individuals working under the direct and personal supervision of the licensee including dates of service.

(c) Each licensee shall have completed training resulting in a certificate of completion of training from a manufacturer for each test method used prior to using any test method.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

Adopt new section to read:

2772 Record retention period

Records, including those described in Section 2771, shall be retained for a period of at least three years. These records shall be available for inspection by the Division and its agents upon demand, and copies thereof, and information pertaining thereto or therein, shall be submitted to the Division upon demand.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

Adopt new section to read:

2773 Grounds for denial, suspension, probation or revocation of license, reprimand and civil liability.

A tank tester may be liable civilly or administratively and subject to disciplinary action including, but not limited to, denial, suspension, probation, or revocation of his or her license in accordance with Subsections 25284.4 (g) and (h) of the Health and Safety Code for performing or causing another to perform, any of the following actions:

- (a) willfully or negligently violating, or causing, or allowing the violation of these regulations;
- (b) willfully or negligently failing to exercise direct and personal control over an unlicensed employee, associate, assistant, or agent during any phase of tank integrity testing;
- (c) without regard to intent or negligence, using or permitting a licensed or unlicensed employee, associate, or agent to use any method or equipment which is demonstrated to be unsafe or unreliable for tank integrity testing;
- (d) submitting false or misleading information on an application for license or engaging in fraudulent activity during the course of an examination for license;
- (e) using fraud or deception in the course of doing business as a tank tester;
- (f) failing to use reasonable care or good judgment while performing tank integrity tests;
- (g) failing to maintain competence in approved tank testing procedures;

- (h) failing to use proper tests or testing equipment to conduct tank integrity tests;
- (i) failing to notify the Division within 30 days of any change of residence address or address of record;
- (j) failing to include the licensee's name, address, and license number in any advertisement as defined in Section 2731 of Article 1;
- (k) aiding or abetting an unlicensed tank tester or assigning his or her license as defined in Section 2731 of Article 1;
- (l) failing to possess, while performing services, a license which shall be presented upon demand to the tank owner or operator, the Division or its agents or any state or local official;
- (m) failing to keep and maintain complete and correct records as described in Sections 2771 and 2772;
- (n) violating Section 17500 of the Business and Professions Code;

(o) willfully or negligently misreading or misinterpreting test results.

(p) failing to have successfully completed training and receiving a certificate of completion of training from a manufacturer in the test method being used by the licensee prior to using the test method.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

ARTICLE 6. PROTESTS AND APPEALS

Adopt new section to read:

2780 Action by Division

An aggrieved party who wishes to protest any discretionary decision made by the Office of Tank Tester Licensing or any violation of the time periods set forth in Article 4 may ask for a review of the decision by the Division Chief. Such protest must be in writing and mailed to the Division Chief within 30 days of the announcement of examination results or notification of an Office of Tank Tester Licensing decision or violation of the time periods set forth in Article 4. All requests must be accompanied by all evidence the aggrieved party wishes to be considered by the Division Chief and by the Board in any subsequent review.

The Division Chief shall review the evidence and the Office of Tank Tester Licensing decision and shall affirm, rescind, or modify the decision. The Division Chief's determination shall be in writing, labeled as the Division Chief's determination and shall inform the aggrieved party that the determination is final and conclusive unless, within 30 days from the date of receipt of the determination, the aggrieved party petitions the Board for review.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

Adopt new section to read:

2781 Petition for review by Board

(a) A petition for review by the Board shall contain but not be limited to the following:

(1) name and address of petitioner;

(2) a copy of the Office of Tank Tester Licensing decision and the Division Chief's determination which the Board is requested to review;

(3) the date when petitioner received the Division Chief's determination;

(4) the manner in which the petitioner is aggrieved;

(5) the specific action by the Board which the petitioner requests;

(6) a copy of the evidence presented to the Division Chief prior to the determination;

(b) The petitioner may make a written request for a hearing before the Board for the purpose of presenting evidence not provided to and considered by the Division Chief. Any request to present evidence not provided to the Division Chief must include a statement as to why such evidence was not presented to the Division Chief for review.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

Adopt new section to read:

2782 Defective petitions

Upon receipt by the Board of a petition which does not comply with Section 2781, the Board shall notify the petitioner in what respect the petition is defective and the time within which an amended petition may be filed. If a properly amended petition is not received by the Board within the time allowed, the petition shall be dismissed unless good cause is shown for an extension of time.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

Adopt new section to read:

2783 Recommendation by Chief of the Division

A copy of the petition and any accompanying evidence and statement(s) shall be sent to the Division Chief. The Division Chief shall file a response with the Board within 20 days of the receipt of the petition.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

Adopt new section to read:

2784 Action by the Board

(a) The Board may:

(1) Refuse to review the Division Chief's determination if the petition is untimely.

(2) After review of the petition and the response of the Division Chief:

(A) deny the petition upon a finding that the Division Chief's determination was proper;

(B) set aside or modify the Division Chief's determination;

(C) direct the Division to take appropriate action.

(b) Before taking final action, the Board may, in its discretion, hold a hearing for the purpose of oral argument or receipt of additional evidence or both, or the Board may provide for an informal meeting between the petitioner, the Division staff, and a member of the Board and such other persons as the Board deems suitable for the purpose of attempting to resolve the dispute between the petitioner and the Division.

(c) If a hearing is held, the Board shall give reasonable notice to the petitioner, the Division and other persons as the Board deems appropriate, the time and place of the hearing and of the issues to be considered. The hearing shall be conducted in a manner deemed most

suitable for securing all relevant evidence
without unnecessary delay.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

ARTICLE 7. DISCIPLINARY PROCEEDINGS

Adopt new section to read:

2790 Disciplinary Proceedings

A tank tester may be liable civilly in accordance with Subsection 25284.4(h) of the Health and Safety Code and, in addition, may be subject to administrative sanctions pursuant to Subsection 25284.4(g) of the Health and Safety Code for performing or causing another to perform, any of the actions specified in Section 2773 of Article 5.

Authority: H&SC 25284.4 .

Reference: H&SC 25284.4

ARTICLE 8. REVENUE

Adopt new section to read:

2800 Fees

- (a) The nonrefundable application fee for an initial tank tester license is one hundred dollars (\$100).
- (b) The examination fee for a tank tester license is two hundred dollars (\$200).
- (c) The license fee for a tank tester shall not exceed six hundred dollars (\$600).
- (d) The nonrefundable reexamination fee is two hundred dollars (\$200).
- (e) The license renewal fee for a tank tester shall not exceed six hundred dollars (\$600).
- (f) The license reinstatement fee is two hundred dollars (\$200).

(g) The fee for a duplicate license, to replace a lost, stolen or destroyed license is ten dollars (\$10).

(h) The fee for the cost of a certified copy of any license or a certification of licensure is five dollars (\$5).

(i) The fee for processing a dishonored check is fifteen dollars (\$15).

Authority: H&SC 25284.4

Reference: H&SC 25284.4

Adopt new section to read:

2801 Copies of laws, rules, etc.; disposition

The Office of Tank Tester Licensing shall furnish one copy of the licensing law, rules, regulations, manuals, or guides to any applicant or licensee or other interested parties without charge.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

Adopt new section to read:

2802 Refund of fees

Application and license fees are not refundable. Examination fees may be refunded only if the application is denied or rejected by the Office of Tank Tester Licensing, the Division Chief or the Board

Authority: H&SC 25284.4

Reference: H&SC 25284.4

1. Amendments to text of regulations

A. Errata Sheet Dated December
8, 1988

ERRATA: DECEMBER 8, 1988 DRAFT
UNDERGROUND TANK TESTER REGULATIONS

CALIFORNIA CODE OF REGULATIONS
TITLE 23 WATERS
CHAPTER 3 WATER RESOURCES CONTROL BOARD
SUBCHAPTER 16 UNDERGROUND TANK TESTER REGULATIONS

Page 1: The following amendment should be made to Section 2730 because the Board may not certify the competency of applicants for tank tester licenses.

"2730 Purpose

The Board is vested with all the functions and duties relating to the administration of the Tank Tester License Program (Section 25284.4 Health and Safety Code). Specifically, the purpose of the Tank Tester License Program is to protect the environment and public health and safety by certifying the qualifications and competency of individuals testing underground storage tanks, establishing minimum qualifications for those who test underground storage tanks and by establishing a licensing program for underground storage tank testers."

Page 3: Section 2731(d)(3) should be amended to eliminate reference to specific test procedures:

"(3) Understanding of the specific test procedures, principles, and equipment for which the tank tester will be qualified to operate."

Pages 6 and 7: Section 2731(o) should be amended to refer to a certificate of completion of training rather than certification from a manufacturer.

"(o) "Qualifying Experience" means, prior to January 1, 1990, experience in all aspects of tank testing including setting up and operating equipment, collecting data and producing reports, after successfully completing training and certification receiving a certificate of completion of training from a manufacturer in the appropriate test procedures. On and after January 1, 1990, "qualifying experience" means experience in all aspects of tank testing including setting up and operating equipment, collecting data and producing reports under the direct and personal supervision of a licensed tank tester, during which time training and certification is successfully completed and a certificate of completion of training is received from a manufacturer in the appropriate test procedures."

Page 14: Section 2761(a)(2) should be amended to refer to a course of study approved by the division rather than the Board. This is consistent with Section 2731(d)

"(2) a statement signed under penalty of perjury, verifying the applicant's qualifying experience as specified in Section 2670 (a) and (b) or a certificate of satisfactory

completion of a course of study approved by the Board
division;

Page 14: Section 2761(a)(3) should be amended to include principles in required training:

"(3) a certificate from a manufacturer certifying that the
applicant was trained in the principles and use of the
equipment and method which the applicant used to gain his
or her qualifying experience;

Page 16: Section 2762(a)(3) should be deleted because the requirement is addressed in Section 2761(a)(3):

(a) Content - The examination shall include: (1) general
principles of tank and pipeline testing; (2) basic
understanding of the mathematics relating to tank testing;
~~(3) understanding of the specific test procedures,~~
~~principles and equipment which the tank tester will be~~
~~qualified to operate; (4) (3) knowledge of the regulations~~
~~and laws governing underground storage tanks; and (5) (4)~~
proper safety procedures.

Page 16: Section 2761(e) should be amended to state that the application is confidential pursuant to 1798.61 of the Civil Code.

(e) Confidential information - All information on the The
application shall be confidential pursuant to the
Information Practices Act [Chapter 1 (commencing with
Section 1798 of Title 1.8 of Part 4 of division 3 of the

Civil Code)] and shall not be released to the public.

Section 1798.61 of the Civil Code.

Page 18: Section 2762(e) should be amended to include the statement that applicants may not review their graded examination materials pursuant to Section 6254 of the Government Code:

(e) Notification of results - The division shall notify applicants, in writing, of the results of the examination. Applicants may not review their graded examination materials pursuant to Section 6254 of the Government Code.

Page 20: Section 2763(c) should be amended to delete the requirement to return expired licensed to the division:

(c) Notification of expiration; cessation of display - Upon the expiration of any license issued under these regulations, the holder of the license shall cease to carry the license and shall immediately return the license to the division.

B. Errata Sheet Dated December
15, 1988

MARCH 30, 1989 INDEX TO RULEMAKING FILE FOR REGULATIONS GOVERNING UNDERGROUND
TANK TESTERS (SUBCHAPTER 17, CHAPTER 3, TITLE 23, CALIFORNIA CODE OF REGULATIONS)

ERRATA: DECEMBER 15, 1988 DRAFT
UNDERGROUND TANK TESTER REGULATIONS

CALIFORNIA CODE OF REGULATIONS
TITLE 23 WATERS
CHAPTER 3 WATER RESOURCES CONTROL BOARD
SUBCHAPTER 16 UNDERGROUND TANK TESTER REGULATIONS

Pages-All: Replace the term "State Board" with "Board" and replace "division" with "Division".

Page 7: The definition of "manufacturer" in Section 2731(m) should be amended to specify that the business that produces and sells the testing equipment also may provide the training for that equipment.

"(m) "Manufacturer" means any business involved in the production of, sale of or training for tank testing equipment which produces and sells tank testing equipment and which may provide training in the use of that equipment."

Page 11: Section 2750 should be amended to specify that tank testing must be conducted by a licensee or under a licensee's direct and personal supervision.

"On and after January 1, 1990 all tank tests conducted within this state, as defined in Section 2731 of Article 1, must be performed by or under the direct and personal supervision of a tank tester with a currently valid tank tester license issued pursuant to these regulations."

Page 13: In response to comments at the December 8, 1988 Workshop and the change made to Section 2731(d)(3) in the December 8 Errata Sheet, Section 2760(a) should be amended as follows:

"(a) demonstrate a minimum of either one year of verifiable qualifying experience testing at least fifty underground storage tanks or have successfully completed both an approved course of study as defined in Section 2731 of Article 1 and training resulting in a certificate of completion of training from a manufacturer in the test procedure to be used;:-"

Page 15: Section number 2760 is transposed in Section 2761(a)(2) and should read:

"(2) a statement signed under penalty of perjury, verifying the applicant's qualifying experience as specified in Section ~~2670~~ 2760 (a) and (b) or a certificate of satisfactory completion of a course of study approved by the Board Division;"

Pages 14 and 16: Sections 2760(d) and 2761(a)(5) should be amended to delete the word nonrefundable:

(Section 2760(d))

"(d) pay the nonrefundable application fee and the nonrefundable examination fee as specified in Section 2800 of Article 8;"

(Section 2761(a)(5))

"(5) the nonrefundable application fee and the nonrefundable examination fee as specified in Section 2800 of Article 8."

Page 16: Section 2761(b) should be amended to replace the word "will" with "may":

"(b) Submittal - An application shall be postmarked by the final filing date set forth in the examination information and schedule. Applications postmarked after the final filing date will may be held over and processed for the next scheduled examination."

Pages 24,25 and 29: In response to comments at the December 8, 1988 Workshop regarding tank testers who change methods of tank testing after being licensed, Sections 2771(c) and 2773(p) should be added:

(Section 2771, Page 24)

"2771 Liability of licensee; employee records; manufacturer's certificate of training for testing method used"

(Section 2771, Page 25)

"(c) Each licensee shall have completed training resulting in a certificate of completion of training from a manufacturer for each test method used prior to using any test method."

(Section 2773, Page 29)

"(p) failing to have successfully completed training and receiving a certificate of completion of training from

a manufacturer in the test method being used by the licensee prior to using the test method."

Page 28: Section 2773(k) should be amended to include the words "as defined":

"(k) aiding or abetting an unlicensed tank tester or assigning his or her license as defined in Section 2731 of Article 1;"

Pages 30 through 32: Sections 2780 and 2781 should be amended to specify that the Division Chief will review Office of Tank Tester Licensing decisions and that protests must be in writing and mailed to the Division in lieu of "mailed to the division in writing". Change "division", "division staff", and "chief of the division" to "Division Chief". Change "staff recommendation" to "Office of Tank Tester Licensing decision". Replace "make a final" with "affirm, rescind, or modify". For the purpose of clarity, specify that the Division Chief's decision is a "determination" rather than a "decision" or "final decision". In Section 2781(a)(2), replace "specific final" with "Office of Tank Tester Licensing" to include the Division Chief's determination :

"An aggrieved party who wishes to protest any discretionary decision made by the Office of Tank Tester Licensing or any violation of the time periods set forth in Article 4 may ask for a review of the decision by the Division staff Chief. Such protest must be in writing and mailed to the Division in writing Chief within 30 days of the announcement of examination results or notification of an Office of Tank Tester Licensing decision or violation of the time periods set forth in Article 4. All requests must be accompanied by all evidence the aggrieved party wishes to be considered by the Division Chief and by the State Board in any subsequent

review.

The Division Chief of the division shall review the evidence and the staff recommendation Office of Tank Tester Licensing decision and shall make a final affirm, rescind, or modify the decision. ~~Such The Division Chief's decision determination~~ shall be in writing, labeled as the final decision of the division Division Chief's determination and shall inform the aggrieved party that said decision the determination is final and conclusive unless, within 30 days from the date of receipt of the decision determination, the aggrieved party petitions the State Board for review."

(Section 2781(a) and (b))

"(2) a copy of the specific final Office of Tank Tester Licensing decision of and the Division Chief's determination which the State Board is requested to review;

(3) the date when petitioner received the State Board's final decision Division Chief's determination;

(4) the manner in which the petitioner is aggrieved;

(5) the specific action by the State Board which the

petitioner requests;

(6) a statement copy of the evidence presented to the
State Board Division Chief prior to the
determination final decision;

(b) The petitioner may make a written request for a hearing
before the State Board for the purpose of presenting
evidence not provided to and considered by the Division
Chief. Any request to present evidence not provided to
the Division Chief must include a statement as to why
such evidence was not presented to the Division Chief
for its review."

Page 32: The reference to Section 2782 should be replaced with
"2781" in Section 2782 as follows:

"2782 Defective petitions

Upon receipt by the State Board of a petition which
does not comply with Section 2782 2781, the State Board
shall ..."

Page 33: Replace "chief of the division" with "Division Chief"
and "thereof" with "of the petition" in Section 2783:

"A copy of the petition and any accompanying evidence and
statement(s) shall be sent to the chief of the division
Division Chief. The chief of the division Division Chief

shall file a response with the State Board within 20 days of the receipt thereof of the petition."

Page 33: Replace "Action by division" with "Action by the Board" in the title of Section 2784 for the purpose of making the title agree with the content of this section. For the purpose of clarity, replace "final decision", "final decision of the division" and "division's final decision" with "Division Chief's determination" in the same section. Change "division" to "Division staff" in Paragraph (b) of the same section:

"2784 Action by ~~division~~ the Board

(a) The State Board may:

(1) Refuse to review the ~~final decision of the division~~ Division Chief's determination if the petition is untimely.

(2) After review of the petition and the response of the Division Chief:

(A) deny the petition upon a finding that the ~~final decision of the division~~ Division Chief's determination was proper;

(B) set aside or modify the ~~division's final decision~~ Division Chief's determination;

(C) direct the Division to take appropriate action.

(b) Before taking final action, the State Board may, in its discretion, hold a hearing for the purpose of oral argument or receipt of additional evidence or both, or the State Board may provide for an informal meeting between the petitioner, the division staff, and a member of the State Board and such other persons as the State Board deems suitable for the purpose of attempting to resolve the dispute between the petitioner and the Division."

Page 37: Section 2800(b) should be amended to delete the word nonrefundable:

"(b) The nonrefundable examination fee for a tank tester license is two hundred dollars (\$200)."

Page 37: Replace "shall not exceed" with "is" in Section 2800(f):

"(f) The license reinstatement fee shall not exceed is two hundred dollars (\$200)."

Page 39: Delete the language in Section 2802 and replace with language that allows the Division to refund the examination fee of an applicant if the Division or the Board denies or rejects the application:

"Fees shall not be refunded except in accordance with Article 4 Application and license fees are not refundable."

Examination fees may be refunded only if the application is denied or rejected by the Office of Tank Tester Licensing, the Division Chief or the Board."

g. Resolution No. 88-131

STATE WATER RESOURCES CONTROL BOARD

RESOLUTION NO. 88- 131

ADOPTION OF REGULATIONS GOVERNING LICENSURE OF
UNDERGROUND STORAGE TANK TESTERS

WHEREAS:

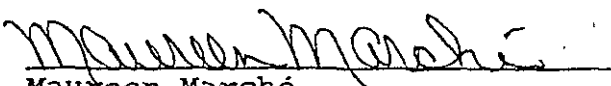
1. Section 25284.4 was added to Chapter 6.7 of the Health and Safety Code by Chapter 1372, Statutes of 1987 (AB 1413, Cortese).
2. Section 25284.4 of the Health and Safety Code requires all tank integrity tests to be conducted by, or under the direct and personal supervision of, a licensed tank tester on and after January 1, 1989.
3. Section 25284.4(a) of the Health and Safety Code provides for an extension of the licensing deadline to January 1, 1990 to allow tank testers a reasonable opportunity to qualify for licensure.
4. Section 25284.4(e) of the Health and Safety Code directs the State Board to adopt any emergency regulations necessary to implement tank tester licensing.

THEREFORE BE IT RESOLVED:

That the proposed regulations which implement, interpret, and make specific the statute governing tank tester licensing, attached to this resolution as Attachment 1, be adopted and codified in Subchapter 16 of Chapter 3 of Title 23 of the California Code of Regulations (23 CCR Sections 2730-2802)

CERTIFICATION

The undersigned, Administrative Assistant to the State Water Resources Control Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted at a meeting of the State Water Resources Control Board held on December 15, 1988.


Maureen Marché

Administrative Assistant to the Board

h. Fiscal Impact Statement

(Form 399) -12/21/1988

Secretary State approval and
1/3/1989 Department of Finance
approval

FISCAL IMPACT STATEMENT (REGULATIONS AND ORDERS)

STD 399 (5/86)

STATE OF CALIFORNIA

SEE SAM SECTION 6055 FOR INSTRUCTIONS

DEPARTMENT	State Water Resources Control Board	CONTACT PERSON	Marcia Davey	PHONE NUMBER	322-4340
TITLE/DESCRIPTION OF REGULATION/ORDER					

Emergency Regulations for Tank Tester Licensing Program

A. FISCAL EFFECT ON LOCAL GOVERNMENT (Indicate appropriate boxes 1 through 6 and complete if necessary)

- ☐ 1. Additional expenditures of approximately \$ _____ annually which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:
- ☐ a. is provided in (Item _____ Budget Act of _____) or (Chapter _____, Statutes of _____)
- ☐ b. will be requested in the _____ (FISCAL YEAR) Governor's Budget for appropriation in Budget Act of _____
- ☐ 2. Additional expenditures of approximately \$ _____ annually which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:
- ☐ a. implements the Federal mandate contained in _____
- ☐ b. implements the court mandate set forth by the _____ court in the case of _____ vs. _____
- ☐ c. implements a mandate of the people of this State expressed in their approval of Proposition No. _____ at the _____ (DATE) election;
- ☐ d. is issued only in response to a specific request from the _____, which is/are the only local entity(s) affected;
- ☐ e. is more appropriately financed from the _____ (FEES, REVENUE, ETC.) of the _____ Code;
- ☐ f. provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each such unit.
- ☐ 3. Savings of approximately \$ _____ annually.
- ☐ 4. No additional costs or savings because this regulation makes only technical, nonsubstantive or clarifying changes to current law and regulations.
- ☒ 5. No fiscal impact exists because this regulation does not affect any local entity or program.
- ☐ 6. Other _____

B. FISCAL EFFECT ON STATE GOVERNMENT (Indicate appropriate boxes 1 through 4 and complete if necessary)

- ☐ 1. Additional expenditures of approximately \$ _____ annually. It is anticipated that State agencies will:
- ☐ a. be able to absorb these additional costs within their existing budgets and resources.
- ☐ b. request supplemental funding by means of "Budget Change Proposals" for the _____ fiscal year.
- ☐ 2. Savings of approximately \$ _____ annually.
- ☒ 3. No fiscal impact exists because this regulation does not affect any State agency or program.
- ☐ 4. Other _____

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS (Indicate appropriate boxes 1 through 4 and complete if necessary)

- ☐ 1. Additional expenditures of approximately \$ _____ annually.
- ☐ 2. Savings of approximately \$ _____ annually.
- ☒ 3. No fiscal impact exists because this regulation does not affect any federally funded State program or agency.
- ☐ 4. Other _____

SIGNATURE	<i>Ronald Lucero</i>	TITLE	Budget Officer
AGENCY SECRETARY APPROVAL/CONCURRENCE	<i>Jeannine Gayle</i>	DATE	12/2/88
DEPARTMENT OF FINANCE APPROVAL/CONCURRENCE	<i>Diane M. Cummin</i>	DATE	1/3/89

i. Statutory Authority

Chapter 3.5 (commencing with Section 25282) and amended by Stats.1984, c. 1038, § 5.

list of all the hazardous substances shall be prepared and adopted, commencing with Section 11340) of Part 1.

numbered § 25282 and amended by Stats.1984, c. 1038, § 5.

regulations adopted by the board. A person who assumes responsibility for the jurisdiction within the boundary of which assumes responsibility for on or before January 1, 1986, and which the city is located. A county as the local agency responsible assumes responsibility for implementation.

numbered § 25283 and amended by Stats.1984, c. 1038, § 5.

joint powers agreement with other local agencies.

amended by Stats.1984, c. 1038, § 7 to read:

§ 25283. Transferred permits.

or operate an underground storage tank shall transfer the permit to the local agency to the owner.

the acceptance of the obligations of the person who assumes responsibility for the operation of an underground storage tank. That person shall submit the completed form to the local agency to be transferred. A transfer of the permit to operate the tank shall be subject to the provisions of the permit or additions by amendment.

underground storage tank, pursuant to the criteria specified in subdivision (a) of Section 25295, upon receiving the completed form.

(c) Any person assuming ownership of an underground storage tank used for the storage of hazardous substances for which a valid operating permit has been issued shall have 30 days after the date of assumption of ownership to apply for an operating permit pursuant to Section 25286 or, if accepting a transferred permit, shall submit to the local agency the completed form accepting the obligations of the transferred permit, as specified in subdivision (a). During the period from the date of application until the permit is issued or refused, the person shall not be held to be in violation of this section.

(d) When, in its judgment, it is appropriate to do so, the local agency may issue a single permit to a person for a facility.

(Formerly § 25283, added by Stats.1983, c. 1046, § 3. Renumbered § 25284 and amended by Stats.1984, c. 1038, § 5.)

1984 Legislation
Former § 25284 was renumbered § 25291 and amended by Stats.1984, c. 1584, § 2.

Renumbering and amendment of this section by § 12 of Stats.1984, c. 1038, failed to become operative under the provisions of § 27 of that Act.

Amendment of this section by § 1 of Stats.1984, c. 1584, failed to become operative under the provisions of § 10 of that Act.

§ 25284.1. Renumbered § 25292 and amended by Stats.1984, c. 1584, § 4

Renumbering and amendment of this section by § 13 of Stats.1984, c. 1038, failed to become operative under the provisions of § 27 of that Act.

Amendment of this section by § 3 of Stats.1984, c. 1584, failed to become operative under the provisions of § 10 of that Act.

§§ 25284.2, 25284.3. Renumbered §§ 25293, 25294 and amended by Stats.1984, c. 1038, §§ 14, 15

§ 25284.4. Tank integrity tester licensing; fees; examination; civil liability of testers; sanctions

(a) On and after January 1, 1989, all tank integrity tests required by this chapter or pursuant to any local ordinance in compliance with Section 25299.1 shall be performed only by, or under the direct and personal supervision of, a tank tester with a currently valid tank testing license issued pursuant to this section. No person shall engage in the business of tank integrity testing, or act in the capacity of a tank tester, within this state on and after January 1, 1989, without first obtaining a tank testing license from the board. The board may extend the January 1, 1989, date for a period of not more than one year, to give tank testers a reasonable opportunity to qualify for licensing. Any person who violates this subdivision is guilty of a misdemeanor and may be subject to civil liability pursuant to subdivision (h).

(b) Any person proposing to conduct tank integrity testing within the state shall apply to the board for a tank testing license, and shall pay the appropriate fee established by the board. A license issued pursuant to this section shall expire three years after the date of issuance and shall be subject to renewal, except as specified in this section. If the tank tester fails to renew the tank tester's license within three years of the license's expiration date, the license shall lapse and the person shall apply for a new tank testing license and shall meet the same requirements of this section for a new applicant. A tank tester shall pay a fee to the board at the time of licensing and at the time of renewal. The board shall adopt a fee schedule for the issuance and renewal of tank testing licenses to cover the necessary and reasonable costs of administering and enforcing this section.

(c) The board may establish any additional qualifications and standards for the licensing of tank testers. Each applicant for licensing as a tank tester shall demonstrate a minimum of either one year of qualifying experience of testing underground storage tanks, or have successfully completed a course of study applicable to tank testing which is satisfactory to the board, and shall pass an examination specified by the board. The examination shall, at a minimum, test the applicant's knowledge of all of the following:

- (1) General principles of tank and pipeline testing.
- (2) Basic understanding of the mathematics relating to tank testing.
- (3) Understanding of the specific test procedures, principles, and equipment for which the tank tester will be qualified to operate.

Asterisks * * * indicate deletions by amendment

(4) Knowledge of the regulations and laws governing the regulation of underground storage tanks.

(5) Proper safety procedures.

(d) The board shall maintain a current list of all persons licensed pursuant to this section, including a record of enforcement actions taken against these persons. This list shall be made available to local agencies and the public on request.

(e) The board shall adopt any regulations necessary to implement tank tester licensing. The board shall adopt these regulations as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law, as necessary, for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations adopted by the board pursuant to this section shall be filed with, but not repealed by, the Office of Administrative Law and shall remain in effect until revised by the board.

(f) A tank tester may be liable civilly in accordance with subdivision (h) and, in addition, may be subject to administrative sanctions pursuant to subdivision (g) for performing or causing another to perform, any of the following actions:

(1) Willfully or negligently violating, or causing, or allowing the violation of, this chapter or any regulations adopted pursuant to this chapter.

(2) Willfully or negligently failing to exercise direct and personal control over an unlicensed employee, associate, assistant, or agent during any phase of tank integrity testing.

(3) Without regard to intent or negligence, using or permitting a licensed or unlicensed employee, associate, assistant, or agent to use any method or equipment which is demonstrated to be unsafe or unreliable for tank integrity testing.

(4) Submitting false or misleading information on an application for license.

(5) Using fraud or deception in the course of doing business as a tank tester.

(6) Failing to use reasonable care, or judgment, while performing tank integrity tests.

(7) Failing to maintain competence in approved tank testing procedures.

(8) Failing to use proper tests or testing equipment to conduct tank integrity tests.

(9) Any other action which the board may, by regulation, prescribe.

(g)(1) The board may suspend the license of a tank tester for a period of up to one year, and may revoke, or refuse to grant or renew, a license and may place on probation, or reprimand, the licensee upon any reasonable ground, including, but not limited to, those violations specified in subdivision (f). The board may investigate any licensed tank tester after receiving a written request from a local agency.

(2) The board shall notify the tank tester of any alleged violations and of proposed sanctions, before taking any action pursuant to this subdivision. The tank tester may request a hearing, or submit a written response within 30 days of the date of notice. Any hearing conducted pursuant to this subdivision shall be conducted in accordance with the hearing procedure specified in subdivision (h). After the hearing, or at a time after the 30-day response period, the board may impose the appropriate administrative sanctions authorized by this subdivision if it finds that the tank tester has committed any of the alleged violations specified in the notice.

(h)(1) The board may impose civil liability for a violation of subdivision (a) or (f) in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 of Division 7 of the Water Code, in an amount which shall not exceed five hundred dollars (\$500) for each day in which the violation occurs, except that the chief of the division of water quality of the board or any other person designated by the board shall issue the complaint to the violator. The complaint shall be issued based on information developed by board staff or local agencies. Any hearing on the complaint shall be made before the board, or a panel thereof, consisting of one or more board members. The decision of the board shall be final upon issuance and may be reviewed pursuant to Section 13325 of the Water Code within 30 days following issuance of the order.

Underline indicates changes or additions by amendment

(2) Civil liability request of the for each day

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1984 Legislative Former § 252 amended by State

§ 25284.5. In

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II. Decision of Disapproval of Regulatory Action February 7, 1989

a. Face sheet and text of
December 15, 1988, Regulations
stamped by OAL 1/23/1989

89-0123-01E

FACE SHEET

1989 JAN 23 11:26

OFFICE OF
ADMINISTRATIVE LAW

FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE OFFICE OF ADMINISTRATIVE LAW

CERTIFICATION: I hereby certify that the attached are true and correct copies of regulations adopted, amended or repealed by this agency and that the information specified on this Face Sheet is true and correct.

State Water Resources Control Board

JAMES W. BAETGE

AGENCY OFFICER WITH RULEMAKING AUTHORITY

Date: 1-20-89

For use of Office of Adm Law

For use by Secretary of State only

1. AGENCY CONTACT PERSON FOR THIS FILING (See instructions) James W. Baetge Executive Director (916)445-3085

2. Type of filing, (check one) ☐ 30-day Review ☒ Emergency ☐ Certificate of Compliance (Complete Part 4 below)
☐ Regulatory changes resulting from Govt. Code 11349.7 review (Complete Part 6 below)
☐ Nonsubstantive changes with nonregulatory effect ☐ Printing Error Correction

3. a. Specify California Administrative Code title and sections as follows:
Title 23 SECTIONS ADOPTED: Articles 1-8; Sections 2730 through 2802
SECTIONS AMENDED:
SECTIONS REPEALED:

b. The following sections listed in 3a contain modifications to the text originally made available to the public:

4. CERTIFICATE OF COMPLIANCE (Government Code Section 11346.1(e): The above-named agency officer certifies that this agency complied with the provisions of Government Code Sections 11346.4-11346.8. (Check one)
☐ prior to the emergency adoption
☐ within 120 days of the effective date of the emergency adoption of the above-referenced regulations.

5. Is this filing a resubmittal of a previously disapproved or withdrawn regulation?
☒ No ☐ Yes, if yes, give date(s) of prior submittal(s) to OAL:

6. Is the filing submitted to carry out amendments or repeals identified in the statement of review completion submitted as a result of the agency's review of regulations administered by it as of June 30, 1980?
☒ No ☐ Yes, if yes, give date statement was submitted to OAL

7. If these regulations required prior review and approval or concurrence by any of the following agencies, check appropriate box(es):
☐ Fair Political Practices Commission (Include FPPC approval stamp) ☐ Building Standards Commission (Attach approval)
☐ State Fire Marshall (Attach approval) ☐ Department of Finance (Attach properly signed Std. 399)
☐ Other (SPECIFY AGENCY)

a. PUBLICATION DATE OF NOTICE IN CALIFORNIA ADMINISTRATIVE NOTICE REGISTER b. DATE OF FINAL AGENCY ACTION December 15, 1988 c. DATES OF AVAILABILITY OF MODIFIED REGULATION(S) GOVT CODE SEC. 11346.8(e)

Effective date of regulatory changes: (See Government Code Section 11346.2 and instructions on reverse)
a. ☐ Effective 30th day after filing with the Secretary of State.
b. ☒ Effective upon filing with the Secretary of State.
☐ Effective on as required or allowed by the following statute(s):
c. ☐ Effective on (Designate effective date earlier than 30 days after filing with the Secretary of State pursuant to Govt. Code Sect. 11346.2(d).)
Attach request demonstrating good cause for early effective date. Request subject to OAL approval.
e. ☐ Effective on (Designate effective date later than the normal effective date for the type of order filed.)

CALIFORNIA CODE OF REGULATIONS

TITLE 23 WATERS

CHAPTER 3 WATER RESOURCES CONTROL BOARD

SUBCHAPTER 16 UNDERGROUND TANK TESTER REGULATIONS

Adopted December 15, 1988

- Article 1. General Provisions
- Article 2. Administration
- Article 3. Application of Regulations
- Article 4. Licensing
- Article 5. Conduct of Business and Prohibited Acts
- Article 6. Protests and Appeals
- Article 7. Disciplinary Proceedings
- Article 8. Revenue

UNDERGROUND TANK TESTER REGULATIONS

CALIFORNIA CODE OF REGULATIONS

TITLE 23 WATERS

SUBCHAPTER 16 UNDERGROUND TANK TESTER REGULATIONS

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8.1

2801 Copies of laws, rules, etc.; disposition

8.2

2802 Refund of fees

8.3

ARTICLE 1. GENERAL PROVISIONS

Adopt new section to read:

2730 Purpose

The Board is vested with all the functions and duties relating to the administration of the Tank Tester License Program (Section 25284.4 Health and Safety Code).

Specifically, the purpose of the Tank Tester License Program is to protect the environment and public health and safety by establishing minimum qualifications for those who test underground storage tanks and by establishing a licensing program for underground storage tank testers.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

Adopt new section to read:

2731 Definitions

- (a) "Address of record" means the address at which the licensee wishes to be contacted by the Board. The address of record is public information.
- (b) "Advertisement" means any written or printed communication, for the purpose of soliciting, describing, or promoting the licensee's business including a brochure, letter, pamphlet, newspaper, periodical, publication or other writing. Advertisement includes a radio, television, or similar airwaves transmission which solicits or promotes the licensee's business. It does not include:
- (1) a free directory listing which does not allow space for a license number;
 - (2) any printing or writing on buildings or vehicles where the purpose of the printing is identification;

(3) any printing or writing or communications, memoranda, or any other writing used in the ordinary course of business where the purpose of the writing is other than solicitation or promotion of business.

(c) "Applicant" means any person seeking a tank tester license.

(d) "Approved course of study" means a course of study approved by the Division after being recommended by a committee appointed by the Division and which includes, but is not limited to:

(1) General principles of tank and pipeline testing.

(2) Basic understanding of the mathematics relating to tank testing.

(3) Understanding of test procedures, principles, and equipment.

(4) Knowledge of the regulations and laws governing the regulation of underground storage tanks.

(5) Proper safety procedures.

(6) Hands-on use of tank testing equipment.

Anyone who desires to offer an approved course of study shall submit to the Division a completed form provided by the Division.

(e) "Assign" means to permit an employee or agent in his or her own name to advertise, engage clients, furnish reports, or present bills to clients, or in any manner whatsoever to conduct business for which a license is required under these regulations.

(f) "Board" as used in these regulations means the five members of the State Water Resources Control Board.

(g) "Direct and personal supervision" means the watchful care and inspection of the conduct and performance of a tank tester by a licensee while the licensee is physically located at the work site.

(h) "Division" means the Division of the Board in which the Office of Tank Tester Licensing is located.

(i) "Fraud" or "deception" includes but is not limited to:

(1) knowingly making a false statement relating to the results of a tank test or methods or information obtained in the course of employment;

(2) manufacturing evidence;

(3) making a representation that any part of a tank testing method or associated equipment is certified, approved, or in any way sanctioned by the Board unless the method or equipment is actually certified, approved, or sanctioned by the Board;

(4) failing to provide the services for which compensation has been received or which were agreed to by contract.

(j) "License" means a pocket card issued by the Board which authorizes the licensee to conduct the business of an underground storage tank tester. The license shall include but not be limited to the following:

- (1) a clear, full-face, one inch by one inch color photograph taken within one year immediately preceding the date of filing the application;
- (2) the name of the licensee;
- (3) the address of record of the licensee;
- (4) the license number;
- (5) the expiration date of the license.

The license is the property of the Board.

- (k) "Licensee" means any person licensed under these regulations as a tank tester and who possesses a current and valid license issued by the Board.
- (l) "Local agency" means the department, office, or other agency of a county or city designated pursuant to Section 25283 of the Health and Safety Code.
- (m) "Manufacturer" means any business which produces and sells tank testing equipment and which may provide training in the use of that equipment.

(g) "Tank tester" means an individual who performs tank integrity tests on underground storage tanks.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

ARTICLE 2. ADMINISTRATION

Adopt new section to read:

2740 Record of licensees and enforcement actions

The Office of Tank Tester Licensing shall maintain a current list of all licensed tank testers, including a record of enforcement actions taken. A roster shall be prepared showing names, addresses, and telephone numbers of record of all licensees and any enforcement actions completed. The telephone number may be omitted from the directory upon request of the licensee. One copy of the current roster of licensees shall be furnished to all local agencies after each examination administration. Additional copies of the roster of licensees shall be available to local agencies and the public on application to the Office of Tank Tester Licensing, at a price per copy sufficient to reimburse the Board for the cost of publication. A roster of enforcement actions completed will be available upon request at a price per copy sufficient to reimburse the Board for the cost of publication.

All records of the Board pertaining to licensees shall be public records except confidential letters of reference,

application information, examination material, investigation files, and those documents exempt pursuant to the Information Practices Act [Chapter 1 (commencing with Section 1798 of Title 1.8 of Part 4 of Division 37 the Civil Code)] and the Public Records Act [Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code].

Authority: H&SC 25284.4

Reference: H&SC 25284.4

to register their name and file a copy of their Board-issued tank tester license with the city and/or county. No fee, other than a fee for a local business permit, may be charged nor may any application be required by the city and/or county for that registration.

Authority: H&SC 25284.4

Reference: H&SC 25299.2

ARTICLE 4. LICENSING

Adopt new section to read:

2760 License requirements

An applicant for a tank tester license shall:

(a) demonstrate a minimum of either one year of verifiable qualifying experience testing at least fifty underground storage tanks or have successfully completed both an approved course of study as defined in Section 2731 of Article 1 and training resulting in a certificate of completion of training from a manufacturer in the test procedure to be used;

(b) for an applicant applying to take an examination during the 1989 calendar year, the applicant may document in the application specified in Subsection (c) that he or she will have completed the qualifying experience requirement prior to being issued a license on January 1, 1990. The Division may require the applicant to verify completion of qualifying experience prior to issuing a license;

- (c) file with the Division a completed application as specified in Section 2761;
- (d) pay the nonrefundable application fee and the examination fee as specified in Section 2800 of Article 8;
- (e) provide two color photographs as specified in Section 2731 of Article 1;
- (f) pass an examination administered under the direction of the Division as specified in Section 2762;
- (g) pay the license fee as specified in Section 2800 of Article 8 upon notification by the Division;
- (h) not have been found guilty or have had disciplinary action taken by any local, state or federal agency for any action directly related to the functions and duties of a tank tester.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

Adopt new section to read:

2761 Application for licensure

(a) Content - An application shall be completed on a form provided by the Division and shall include but not be limited to:

- (1) the full name and the business and residence address of the applicant and the name under which the applicant does business;
- (2) a statement signed under penalty of perjury, verifying the applicant's qualifying experience as specified in Section 2760 (a) and (b) or a certificate of satisfactory completion of a course of study approved by the Division;
- (3) a certificate from a manufacturer certifying that the applicant was trained in the principles and use of the equipment and method which the applicant used to gain his or her qualifying experience;
- (4) original signature and date the application was signed;

(5) the nonrefundable application fee and the examination fee as specified in Section 2800 of Article 8.

(6) The Division may require the submission of any additional pertinent information, evidence, statements, or documents which would support the application for licensure.

A completed application is an application that meets all of the above requirements.

(b) Submittal - An application shall be postmarked by the final filing date set forth in the examination information and schedule. Applications postmarked after the final filing date may be held over and processed for the next scheduled examination.

(c) Review - The Division shall review the application and supporting documents to determine the applicant's eligibility for licensure.

(d) Notice - The Division shall notify applicants in writing within thirty (30) days of receipt of an application whether the application is complete and

approved or deficient and disapproved. Such notice, if it indicates a deficiency, will state the specific information which is required to complete the application. If the application is deficient, the applicant may be scheduled for the next examination upon completion of the application.

(e) Confidential information - The application shall be confidential pursuant to the Information Practices Act [Chapter 1 (commencing with Section 1798 of Title 1.8 of Part 4 of Division 3 of the Civil Code)] and shall not be released to the public. Section 1798.61 of the Civil Code.

(f) Abandonment - If an applicant fails to complete his or her application within one year after it has been filed, or fails to take the examination within a one-year period after becoming eligible therefore, the application shall be considered to be abandoned. An application submitted after the abandonment of a former application shall be treated as a new application and shall be required to meet all of the requirements for an initial license.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

Adopt new section to read:

2762 Examination

- (a) Content - The examination shall include: (1) general principles of tank and pipeline testing; (2) basic understanding of the mathematics relating to tank testing; (3) knowledge of the regulations and laws governing underground storage tanks; and (4) proper safety procedures.
- (b) Frequency - A minimum of two examinations shall be given each year.
- (c) Dishonest conduct during examination - An applicant for licensure as a tank tester who engages in dishonest conduct during the examination shall have his or her examination confiscated immediately and shall not have his or her examination graded and shall be denied the opportunity to take the examination at its next administration.
- (d) Confidentiality of examination questions - The Office of Tank Tester Licensing examination questions are confidential. Any person who removes all or part of any

examination from the examination room or area, or who conveys or exposes all or part of any examination to any other person may be disqualified as a candidate for the license for which the applicant applies and may be subject to administrative civil liability under Section 2773 of Article 5.

(e) Notification of results - The Division shall notify applicants, in writing, of the results of the examination. Applicants may not review their graded examination materials pursuant to Section 6254 of the Government Code.

(f) Failure to pass examination; reexamination fee - If an applicant fails to pass an initial examination, he or she shall be eligible for a subsequent examination upon both paying the reexamination fee and filing a completed application for reexamination within the time limits and conditions relating to applications for initial examinations provided in Section 2761.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

Adopt new section to read:

2763 Issuance of license, renewal and reinstatement

- (a) Issuance - Upon the successful completion of the application and examination process and payment of the fees prescribed by these regulations the Division shall issue a tank tester license.

- (b) Renewal of licenses; notice; payment of civil penalties -
 - (1) Except as otherwise prescribed in these regulations, the Division shall issue a renewal license upon submittal of a completed renewal application and payment of the renewal fee as prescribed in Section 2800 of Article 7. The renewal application shall be on a form provided by the Division.

 - (2) Every license issued under these regulations shall be placed on a cyclical renewal, and shall expire three years following the date of issuance or assigned renewal date. In order to implement cyclical renewal, the population of licensees shall be divided into 36 equal groups; the licenses of those in each group to expire on the last day of each successive month. The Division may extend or shorten the first

term of licensure and prorate the required license fee in order to implement this cyclical renewal.

(3) The Division shall send to each licensee a notice of renewal at least 90 calendar days prior to the expiration of each unexpired license.

(4) At least 60 days prior to the expiration, a licensee who desires to renew his or her license shall forward to the Division a completed renewal form and renewal fee as prescribed in these regulations.

(5) Neither the renewal license nor the reinstatement shall be issued until any and all penalties assessed have been paid or otherwise resolved in accordance with these regulations.

(c) Notification of expiration; cessation of display - Upon the expiration of any license issued under these regulations, the holder of the license shall cease to carry the license.

(d) Reinstatement following expiration - An expired license may be reinstated within three years of the date of expiration upon the filing a reinstatement application and payment of the renewal fee and the reinstatement fee.

A license which has been expired for more than three years may not be reinstated; the applicant must file for and meet all of the requirements for an initial license, including passage of the examination.

(e) Suspended license; expiration and renewal; restrictions on activities - A suspended tank tester license is subject to expiration and shall be renewed as provided in this article, but renewal of the license does not entitle the licensee, while the license remains suspended and until it is reinstated, to engage in the licensed activity, or in any other activity or conduct in violation of the order or judgment by which the license was suspended.

(f) Revoked license; expiration; reinstatement after expiration; fee - A revoked license may not be renewed or reinstated.

(g) Assignment - A license issued under these regulations is not assignable.

(h) License denial; grounds - A license may be denied by the Division pursuant to the conditions contained in Section 2773 of Article 5.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

ARTICLE 5. CONDUCT OF BUSINESS AND PROHIBITED ACTS

Adopt new section to read:

2770 Notice of change of address

A licensee shall notify the Division of any change of his or her residence address and address of record within 30 days after such change.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

Adopt new section to read:

2771 Liability of licensee; employee records; manufacturer's certificate of training for testing method used

(a) A licensee shall at all times be responsible for the actions of those who are under the direct and personal supervision of the licensee when such persons are acting within the course and scope of their employment, with regard to actions performed in violation of these regulations or Section 25284.4 of the Health and Safety Code.

(b) Each licensee shall maintain a record of the following information for each underground storage tank for which he or she rendered service:

(1) name, address and telephone number of tank owner or operator and dates service performed;

(2) all information and data collected and reports prepared in the course of performing service as a tank tester, including but not limited to raw data, calculations and reports.

(3) a list of individuals working under the direct and personal supervision of the licensee including dates of service.

(c) Each licensee shall have completed training resulting in a certificate of completion of training from a manufacturer for each test method used prior to using any test method.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

Adopt new section to read:

2772 Record retention period

Records, including those described in Section 2771, shall be retained for a period of at least three years. These records shall be available for inspection by the Division and its agents upon demand, and copies thereof, and information pertaining thereto or therein, shall be submitted to the Division upon demand.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

Adopt new section to read:

2773 Grounds for denial, suspension, probation or revocation of license, reprimand and civil liability.

A tank tester may be liable civilly or administratively and subject to disciplinary action including, but not limited to, denial, suspension, probation, or revocation of his or her license in accordance with Subsections 25284.4 (g) and (h) of the Health and Safety Code for performing or causing another to perform, any of the following actions:

- (a) willfully or negligently violating, or causing, or allowing the violation of these regulations;
- (b) willfully or negligently failing to exercise direct and personal control over an unlicensed employee, associate, assistant, or agent during any phase of tank integrity testing;
- (c) without regard to intent or negligence, using or permitting a licensed or unlicensed employee, associate, or agent to use any method or equipment which is demonstrated to be unsafe or unreliable for tank integrity testing;
- (d) submitting false or misleading information on an application for license or engaging in fraudulent activity during the course of an examination for license;
- (e) using fraud or deception in the course of doing business as a tank tester;
- (f) failing to use reasonable care or good judgment while performing tank integrity tests;
- (g) failing to maintain competence in approved tank testing procedures;

- (h) failing to use proper tests or testing equipment to conduct tank integrity tests;
- (i) failing to notify the Division within 30 days of any change of residence address or address of record;
- (j) failing to include the licensee's name, address, and license number in any advertisement as defined in Section 2731 of Article 1;
- (k) aiding or abetting an unlicensed tank tester or assigning his or her license as defined in Section 2731 of Article 1;
- (l) failing to possess, while performing services, a license which shall be presented upon demand to the tank owner or operator, the Division or its agents or any state or local official;
- (m) failing to keep and maintain complete and correct records as described in Sections 2771 and 2772;
- (n) violating Section 17500 of the Business and Professions Code;

(o) willfully or negligently misreading or misinterpreting test results.

(p) failing to have successfully completed training and receiving a certificate of completion of training from a manufacturer in the test method being used by the licensee prior to using the test method.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

ARTICLE 6. PROTESTS AND APPEALS

Adopt new section to read:

2780 Action by Division

An aggrieved party who wishes to protest any discretionary decision made by the Office of Tank Tester Licensing or any violation of the time periods set forth in Article 4 may ask for a review of the decision by the Division Chief. Such protest must be in writing and mailed to the Division Chief within 30 days of the announcement of examination results or notification of an Office of Tank Tester Licensing decision or violation of the time periods set forth in Article 4. All requests must be accompanied by all evidence the aggrieved party wishes to be considered by the Division Chief and by the Board in any subsequent review.

The Division Chief shall review the evidence and the Office of Tank Tester Licensing decision and shall affirm, rescind, or modify the decision. The Division Chief's determination shall be in writing, labeled as the Division Chief's determination and shall inform the aggrieved party that the determination is final and conclusive unless, within 30 days from the date of receipt of the determination, the aggrieved party petitions the Board for review.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

Adopt new section to read:

2781 Petition for review by Board

(a) A petition for review by the Board shall contain but not be limited to the following:

(1) name and address of petitioner;

(2) a copy of the Office of Tank Tester Licensing decision and the Division Chief's determination which the Board is requested to review;

(3) the date when petitioner received the Division Chief's determination;

(4) the manner in which the petitioner is aggrieved;

(5) the specific action by the Board which the petitioner requests;

(6) a copy of the evidence presented to the Division
Chief prior to the determination;

(b) The petitioner may make a written request for a hearing
before the Board for the purpose of presenting evidence
not provided to and considered by the Division Chief. Any
request to present evidence not provided to the Division
Chief must include a statement as to why such evidence
was not presented to the Division Chief for review.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

Adopt new section to read:

2782 Defective petitions

Upon receipt by the Board of a petition which does not comply
with Section 2781, the Board shall notify the petitioner in
what respect the petition is defective and the time within
which an amended petition may be filed. If a properly amended
petition is not received by the Board within the time
allowed, the petition shall be dismissed unless good cause is
shown for an extension of time.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

Adopt new section to read:

2783 Recommendation by Chief of the Division

A copy of the petition and any accompanying evidence and statement(s) shall be sent to the Division Chief. The Division Chief shall file a response with the Board within 20 days of the receipt of the petition.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

Adopt new section to read:

2784 Action by the Board

(a) The Board may:

(1) Refuse to review the Division Chief's determination if the petition is untimely.

(2) After review of the petition and the response of the Division Chief:

(A) deny the petition upon a finding that the
Division Chief's determination was proper;

(B) set aside or modify the Division Chief's
determination;

(C) direct the Division to take appropriate action.

(b) Before taking final action, the Board may, in its
discretion, hold a hearing for the purpose of oral
argument or receipt of additional evidence or both, or
the Board may provide for an informal meeting between the
petitioner, the Division staff, and a member of the Board
and such other persons as the Board deems suitable for
the purpose of attempting to resolve the dispute between
the petitioner and the Division.

(c) If a hearing is held, the Board shall give reasonable
notice to the petitioner, the Division and other persons
as the Board deems appropriate, the time and place of the
hearing and of the issues to be considered. The
hearing shall be conducted in a manner deemed most

suitable for securing all relevant evidence
without unnecessary delay.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

ARTICLE 7. DISCIPLINARY PROCEEDINGS

Adopt new section to read:

2790 Disciplinary Proceedings

A tank tester may be liable civilly in accordance with Subsection 25284.4(h) of the Health and Safety Code and, in addition, may be subject to administrative sanctions pursuant to Subsection 25284.4(g) of the Health and Safety Code for performing or causing another to perform, any of the actions specified in Section 2773 of Article 5.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

ARTICLE 8. REVENUE

Adopt new section to read:

2800 Fees

- (a) The nonrefundable application fee for an initial tank tester license is one hundred dollars (\$100).
- (b) The examination fee for a tank tester license is two hundred dollars (\$200).
- (c) The license fee for a tank tester shall not exceed six hundred dollars (\$600).
- (d) The nonrefundable reexamination fee is two hundred dollars (\$200).
- (e) The license renewal fee for a tank tester shall not exceed six hundred dollars (\$600).
- (f) The license reinstatement fee is two hundred dollars (\$200).

(g) The fee for a duplicate license, to replace a lost, stolen or destroyed license is ten dollars (\$10).

(h) The fee for the cost of a certified copy of any license or a certification of licensure is five dollars (\$5).

(i) The fee for processing a dishonored check is fifteen dollars (\$15).

Authority: H&SC 25284.4

Reference: H&SC 25284.4

Adopt new section to read:

2801 Copies of laws, rules, etc.; disposition

The Office of Tank Tester Licensing shall furnish one copy of the licensing law, rules, regulations, manuals, or guides to any applicant or licensee or other interested parties without charge.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

Adopt new section to read:

2802 Refund of fees

Application and license fees are not refundable. Examination fees may be refunded only if the application is denied or rejected by the Office of Tank Tester Licensing, the Division Chief or the Board

Authority: H&SC 25284.4

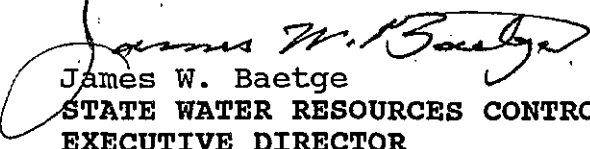
Reference: H&SC 25284.4

b. Board's response to
Decision of OAL Disapproval
March 17, 1989

MEMORANDUM

TO: Gordon Young
Office of Administrative Law

March 17, 1989

From: 
James W. Baetge
STATE WATER RESOURCES CONTROL BOARD
EXECUTIVE DIRECTOR

Subject: Decision of Disapproval of Regulatory Action (OAL
File No. 89-0123-01E)

We have reviewed your February 7, 1989 "Decision of Disapproval of Regulatory Action" concerning "Adoption of Articles 1-8 and Sections 2730-2802 of Title 23 of the California Code of Regulations" (OAL File No. 89-0123-01E) and have amended the regulations. The amended regulations were adopted by the State Water Resources Control Board on March 16, 1989 in Resolution No. 19. We are enclosing two copies of the amended regulations in the rulemaking file. One copy is single underlined for filing with the Secretary of State. The second copy uses single underlining and strikeout to highlight only the changes we have made to the regulations.

This is a resubmittal of the prior filing and we incorporate by reference OAL File No. 89-0123-01E.

A new Form 399 has not been prepared because the subject changes to the regulations have no fiscal impact.

Under the provisions for filing emergency regulations, the Board was not obligated to follow the formal rulemaking procedures concerning notification. However, over 500 tank testers received copies of the proposed regulations and were invited to participate at the December 1988 Workshop and Board Meeting.

The following numbered paragraphs discuss our responses to the issues in your Decision. The paragraph numbering matches the numbering used in your Decision.

1. Sections 2762(e), 2763(a), 2763(b)(6) and 2763(d) have been added or amended to conform with the Permit Reform Act. Median, minimum and maximum application processing times have not been

incorporated because there is no program history from which to compute this information.

- 2.a. Sections 2761(a) and 2763(b)(2) have been added or amended to define the content of an application for the initial and renewal applications. We have also defined the content of a reinstatement application in Section 2763(e). We have deleted reference to a "form provided by the Division" in Sections 2731(d), 2761(a) and 2763(b)(1) and (5).
- b. The term "manufacturing" in Section 2731(i)(2) has been replaced with "fabricating".
- c. The term "certificate of completion of training" has been deleted in Sections 2731(o), 2760(a), 2761(a)(3), 2771(c) and 2773(p). These sections now refer to successful completion of training from a manufacturer.
- d. Section 2760(h) has been deleted from the regulations because it is not a requirement in Section 25284.4 of the Health and Safety Code.
- e. Section 2761(e) has been deleted from the regulations, because confidentiality is addressed in the Civil Code.
- f. In Section 2762(d), the term "subject to administrative civil liability" has been replaced with "liable civilly and in addition may be subject to administrative sanctions" to agree with wording in Section 25284.4(f) of the Health and Safety Code. A similar change has been made in Section 2773.
- g. Section 2762(e) has been deleted from the regulations because Section 6254 of the Government Code defines confidential examination data.
- 3.a. Items identified by you for underlining have been underlined in the regulations to be filed with the Secretary of State.
- b. Subchapter 16 has been replaced with Subchapter 17.

Editorial corrections:

- a. In Section 2731(b) the word "licensees" has been replaced with "licensee's".
- b. In Section 2750 "tank test" has been replaced with

"tank integrity test". To be consistent, we have also inserted the word "integrity" in the phrase "tank test" or "tank testing" in the following sections:

2731(i)(1) and (3)
2731(d)(2) and (6)
2773(g)

2731(m) and (o)
2762(a)

Board - initiated amendments:

- aa. The information required from a provider of a course of study has been defined in Section 2731(d).
- bb. Section 2763(j) has been added giving the Board the authority to issue a replacement pocket card to licensees whose cards have been lost, stolen, or destroyed. Existing Section 2800(g) establishes the fee for replacement of a pocket card.
- cc. Additional citations have been added to the list of references for Sections 2731 and 2773.
- dd. The word "reprimand" has been deleted from the title of Section 2773 because it is not discussed in this section.
- ee. The second paragraph of Section 2740 has been deleted because confidential information is defined in the Information Practices Act and the Public Records Act.
- ff. An applicant for an initial license is required to submit two photographs because all tank tester pocket cards must contain a photograph of the licensee. Therefore, applicants for license renewal and license reinstatement should also be required to submit two photographs. Sections 2763(b)(2) and (e) have been amended accordingly.
- gg. Sections 2763(b)(2) and (e) have been amended to reference Section 2800 in Article 8 when fees are referred to. The words "as prescribed in Section 2800 of Article 7" have been deleted from Section 2763(b)(1).

III. Notice of Proposed
Emergency Rulemaking
Resubmitted March 21, 1989

a. Index

MARCH 30, 1989 INDEX TO RULEMAKING FILE FOR REGULATIONS GOVERNING UNDERGROUND
TANK TESTERS (SUBCHAPTER 17, CHAPTER 3, TITLE 23, CALIFORNIA CODE OF REGULATIONS)

RULEMAKING FILE FOR REGULATIONS
GOVERNING UNDERGROUND TANK TESTERS
(SUBCHAPTER 17, CHAPTER 3, TITLE 23,
CALIFORNIA CODE OF REGULATIONS)

INDEX

- I. Face Sheet (Form 400)
- II. Informative Digest
- III. Resolution No. 89 - 19
- IV. Amended regulations as adopted by the State
Water Resources Control Board on March 16,
1989 (original plus six copies)
- V. Errata Sheet dated March 16, 1989

b. Face Sheet (draft to final)

FACE SHEET

FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE OFFICE OF ADMINISTRATIVE LAW

CERTIFICATION: I hereby certify that the attached is true and correct copy of regulations adopted, amended or repealed by this agency and that the information specified on this Face Sheet is true and correct.

State Water Resources Control Board

JAMES W. BAETGE

AGENCY OFFICER WITH RULEMAKING AUTHORITY

ENDORSED FILED
IN THE OFFICE OF

MAR 30 4 46 AM 1989

MARCH FONG EU
SECRETARY OF STATE
CALIFORNIA

ENDORSED
APPROVED FOR FILING
MAR 30 1989

Office of Administrative Law

For use of Office of Adm Law

Date: 3-21-89

For use by Secretary of State only

1. AGENCY CONTACT PERSON FOR THIS FILING (See instructions) TITLE TELEPHONE

James W. Baetge

Executive Director

(916) 445-3085

2. Type of filing, (check one) ☐ 30-day Review ☒ Emergency ☐ Certificate of Compliance (Complete Part 4 below)

☐ Regulatory changes resulting from Govt. Code 11349.7 review (Complete Part 6 below)

☐ Nonsubstantive changes with nonregulatory effect ☐ Printing Error Correction

3. a. Specify California Administrative Code title and sections as follows:

Title 23

SECTIONS ADOPTED:
Articles 1-8; Sections 2730 through 2802

SECTIONS AMENDED:

SECTIONS REPEALED:

b. The following sections listed in 3a contain modifications to the text originally made available to the public:

4. CERTIFICATE OF COMPLIANCE (Government Code Section 11346.1(e): The above-named agency officer certifies that this agency complied with the provisions of Government Code Sections 11346.4-11346.8. (Check one)

☐ prior to the emergency adoption

☐ within 120 days of the effective date of the emergency adoption of the above-referenced regulations.

5. Is this filing a resubmittal of a previously disapproved or withdrawn regulation?

☐ No ☒ Yes, if yes, give date(s) of prior submittal(s) to OAL: January 23, 1989

6. Is the filing submitted to carry out amendments or repeals identified in the statement of review completion submitted as a result of the agency's review of regulations administered by it as of June 30, 1980?

☒ No ☐ Yes, if yes, give date statement was submitted to OAL

7. If these regulations required prior review and approval or concurrence by any of the following agencies, check appropriate box(es)

☐ Fair Political Practices Commission (Include FPPC approval stamp)

☐ Building Standards Commission (Attach approval)

☐ State Fire Marshall (Attach approval)

☐ Department of Finance (Attach properly signed Std. 399)

☐ Other

(SPECIFY AGENCY)

8. a. PUBLICATION DATE OF NOTICE IN CALIFORNIA ADMINISTRATIVE NOTICE REGISTER

b. DATE OF FINAL AGENCY ACTION

c. DATES OF AVAILABILITY OF MODIFIED REGULATION(S) (GOVT. CODE SEC. 11346.8(c))

March 16, 1989

9. Effective date of regulatory changes: (See Government Code Section 11346.2 and instructions on reverse)

a. ☐ Effective 30th day after filing with the Secretary of State.

b. ☒ Effective upon filing with the Secretary of State.

c. ☐ Effective on _____ as required or allowed by the following statute(s): _____

d. ☐ Effective on _____ (Designate effective date earlier than 30 days after filing with the Secretary of State pursuant to Govt. Code Sect. 11346.2(d).)

Attach request demonstrating good cause for early effective date. Request subject to OAL approval.

e. ☐ Effective on _____ (Designate effective date later than the normal effective date for the type of order filed.)

FACE SHEET

(See Instructions on Reverse)

FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE OFFICE OF ADMINISTRATIVE LAW

CERTIFICATION: I hereby certify that the attached are true and correct copies of regulations adopted, amended or repealed by this agency and that the information specified on this Face Sheet is true and correct.

State Water Resources Control Board

JAMES W. BAETGE
AGENCY OFFICER WITH RULEMAKING AUTHORITY

For use of Office of Adm Law

Date: 3-21-89

For use by Secretary of State only

1. AGENCY CONTACT PERSON FOR THIS FILING (See Instructions) TITLE TELEPHONE

James W. Baetge

Executive Director

(916) 445-3085

2. Type of filing, (check one) ☐ 30-day Review ☒ Emergency ☐ Certificate of Compliance (Complete Part 4 below)
- ☐ Regulatory changes resulting from Govt. Code 11349.7 review (Complete Part 6 below)
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☒ No ☐ Yes, if yes, give date statement was submitted to OAL

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- ☐ State Fire Marshall (Attach approval) ☐ Department of Finance (Attach properly signed Std. 399)
- ☐ Other (SPECIFY AGENCY)

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- b. DATE OF FINAL AGENCY ACTION

March 16, 1989

- c. DATES OF AVAILABILITY OF MODIFIED REGULATION(S) (GOVT. CODE SEC. 11346.8(c))

9. Effective date of regulatory changes: (See Government Code Section 11346.2 and instructions on reverse)

- a. ☐ Effective 30th day after filing with the Secretary of State.
- b. ☒ Effective upon filing with the Secretary of State.
- c. ☐ Effective on _____ as required or allowed by the following statute(s):
- d. ☐ Effective on _____ (Designate effective date earlier than 30 days after filing with the Secretary of State pursuant to Govt. Code Sect. 11346.2(d).)
Attach request demonstrating good cause for early effective date. Request subject to OAL approval.
- e. ☐ Effective on _____ (Designate effective date later than the normal effective date for the type of order filed.)

FACE SHEET

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CERTIFICATION: I hereby certify that the attached are true and correct copies of regulations adopted, amended or repealed by this agency and that the information specified on this Face Sheet is true and correct.

State Water Resources Control Board

(AGENCY)

JAMES W. BAETGE

AGENCY OFFICER WITH RULEMAKING AUTHORITY

For use of Office of Adm Law

Date: _____

For use by Secretary of State only

1. AGENCY CONTACT PERSON FOR THIS FILING (See instructions)	TITLE	TELEPHONE
James W. Baetge	Executive Director	(916) 445-3085

2. Type of filing, (check one) ☐ 30-day Review ☒ Emergency ☐ Certificate of Compliance (Complete Part 4 below)

☐ Regulatory changes resulting from Govt. Code 11349.7 review (Complete Part 6 below)

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☐ within 120 days of the effective date of the emergency adoption of the above-referenced regulations.

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☐ No ☒ Yes, if yes, give date(s) of prior submittal(s) to OAL: January 23, 1989

6. Is the filing submitted to carry out amendments or repeals identified in the statement of review completion submitted as a result of the agency's review of regulations administered by it as of June 30, 1980?

☒ No ☐ Yes, if yes, give date statement was submitted to OAL: _____

7. If these regulations required prior review and approval or concurrence by any of the following agencies, check appropriate box(es)

☐ Fair Political Practices Commission (Include FPPC approval stamp) ☐ Building Standards Commission (Attach approval)

☐ State Fire Marshall (Attach approval) ☐ Department of Finance (Attach properly signed Std. 399)

☐ Other _____ (SPECIFY AGENCY)

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March 16, 1989

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a. ☐ Effective 30th day after filing with the Secretary of State.

b. ☒ Effective upon filing with the Secretary of State.

c. ☐ Effective on _____ as required or allowed by the following statute(s): _____

d. ☐ Effective on _____ (Designate effective date *earlier than* 30 days after filing with the Secretary of State pursuant to Govt. Code Sect. 11346.2(d).)
Attach request demonstrating good cause for early effective date. Request subject to OAL approval.

e. ☐ Effective on _____ (Designate effective date *later than* the normal effective date for the type of order filed.)

INSTRUCTIONS FOR STD 400

Completed Face Sheet for Filing Regulations with the Office of Administrative Law must be attached to the front of each of the seven copies of the regulations. Note that at least one Face Sheet must contain an original signature of the agency officer or rulemaking authority.

- Part 1.** Provide the name and telephone number of the person who is authorized during the review period to answer questions regarding this regulatory filing. If different than person designated in certification box, attach order delegating authority for making decisions regarding these regulations.
- Part 2.** Check the appropriate box. NOTE: Nonsubstantive changes are reviewed by and are subject to OAL approval.
- Part 3 a.** Provide the Administrative Code Title in which the regulation will appear and list *section* number of each regulation to be amended, adopted or repealed. *When filing a Certificate of Compliance list the section number of each emergency regulation formally adopted after completion of the rulemaking procedures of the APA.* (Attach additional sheets if necessary.)
- b.** Please list the section number of each regulation which includes modifications to the text to the regulations originally made available to the public pursuant to Government Code Section 11346.5(b), and adopted, amended or repealed as modified pursuant to Government Code Section 11346.8(c). The sections listed here must correspond to the sections which were made available for 15 days pursuant to Government Code Section 11346.8(c).
- Part 4.** Check appropriate box as necessary to comply with the requirements of Government Code Section 11346.1(e).
- Part 5.** Specify date(s) and file number(s) of each prior submittal of these regulatory changes which was withdrawn or disapproved.
- Part 6.** OAL has a longer time period to review regulatory changes submitted to carry out amendments and repeals which are identified in the agency's Statement of Review Completion and which have been submitted as a result of the agency's review of regulations administered by it as of June 30, 1980. Therefore, these regulatory changes should be submitted in a separate filing from any other regulatory changes. If not submitted separately, regulations not resulting from the review and any material in the rulemaking file relating to them must be clearly identified.
- Part 7.** Certain regulatory activities must be reviewed and approved by other state agencies prior to submittal to OAL. Regulations subject to prior approval include:
- Fire and panic safety regulations (Govt. Code Sec. 11342.3).
 - Building standards as defined in Section 18909 of the Health and Safety Code (Govt. Code Sec. 11343).
 - Conflict of Interest regulations (Title 2 California Admin. Code Section 18750(i)).

Note: Where regulations have a fiscal impact on state, local or federal government or result in reimbursable costs to local government or school districts the fiscal impact statement must be reviewed, approved and signed by the Department of Finance before the regulations will be accepted for filing by OAL. See Government Code Sections 11349.1, 11346.5(a)(6), and S.A.M. sections 6050-6057.

- Part 8 a.** Provide the publication date of the Notice Register in which the notice of proposed action appeared.
- b.** Provide the date on which the regulatory agency adopted the regulatory changes.
- c.** If the regulations were modified subsequent to the hearing or written comment period, provide the dates during which the modified regulations were made available to the public. Note that period must be at least 15 days and must be completed prior to the date the agency adopts the modified text. All modifications must be clearly indicated.
- Part 9.** Effective Dates — check one of the following:
- A regulation or order of repeal is effective 30 days after filing with the Secretary of State unless a different date is specified below.
 - An emergency order, Certificates of Compliance or nonsubstantive change is effective upon filing with the Secretary of State unless a later date is specified below.
 - If an effective date other than specified above is required or allowed by statute, provide the date and the statutory citations(s).
 - If an early effective date is being requested, please attach a letter specifying the date the regulation(s) should take effect and the reason for the early effective date. Requests are granted by OAL upon a showing of good cause.
 - If an effective date later than specified above is requested, provide the date.

FILING REQUIREMENTS

The following material must be submitted when filing regulations with OAL:

- Seven (7) copies of the regulations. Note: Use underline and strikeout to indicate changes in an existing section. For adoption of a new section, underline new text. The repeal of an entire section may be indicated by placing a diagonal slash through the text to be repealed.
- A completed Face Sheet for filing regulations with the Office of Administrative Law, Form STD 400 attached to the front of each copy of the regulations, with at least one Face Sheet bearing an original signature.
- Complete rulemaking file, with index and sworn statement. (See Govt. Code Sec. 11347.3 for full list of rulemaking content.)

c. Informative Digest

INFORMATIVE DIGEST

Section 25284.4 was added to Chapter 6.7 of the Health and Safety Code by Chapter 1372, Statutes of 1987 (AB 1413, Cortese). Under Section 25284.4, the Board is vested with responsibility for the administration of the Tank Tester Licensing Program. Specifically, the State Board must protect the environment and public health and safety by establishing minimum qualifications of individuals testing underground storage tanks.

Section 25284.4 requires all tank integrity tests to be conducted by, or under the direct and personal supervision of, licensed tank testers on and after January 1, 1989. Section 25284.4(a) of the Health and Safety Code permits an extension of the licensing deadline to January 1, 1990 to allow tank testers a reasonable opportunity to qualify for licensure. Section 25284.4(e) of the Health and Safety Code directs the State Board to adopt any emergency regulations necessary to implement tank tester licensing.

Summary of Proposed Regulations

Article 1. General Provisions

The regulations implement, interpret, and make specific the provisions of Section 25284.4 of the Health and Safety Code. The regulations also include definitions for the terms used in the regulations and in statute.

Article 2. Administration

Under this Article, the State Board is required to keep records regarding all licensed tank testers and any enforcement actions taken against them. The State Board must furnish lists of new licensees to all local agencies after each examination and licensing process. It must also make lists of enforcement actions available upon request and payment of a duplication fee.

Article 3. Application of Regulations

Persons who conduct or directly supervise tank integrity tests on and after January 1, 1990, must be licensed by the

Board. Local agencies may require tank testers to file a copy of their Board-issued license with the local agency, but may not require an application or fee for such filing. They may require a local business permit.

Article 4. Licensing

Applicants for a tank tester license must complete training from the manufacturer of the equipment they are using. They must also have completed either a minimum of one year of qualifying experience or an approved course of study. They must file an application and fee, include two color photographs, and pass an examination administered by the Board.

This Article specifies the: (a) content of the application and examination; (b) timeframe in which the application must be filed; (c) nature of the Board's review and notice to the applicant; (d) provisions for abandonment of the application; (e) examination frequency; (f) penalties for dishonest conduct during an examination; (g) provisions for re-examination after failure; (h) issuance of an initial license, renewal or reinstatement; (i) licensee's responsibility if the license is expired, suspended or revoked; (j) prohibition against assignment of licenses; and (k) license denial.

Article 5. Conduct of Business and Prohibited Acts

Licensees are required to: a) notify the Board of any change of residence address or address of record within 30 days of the change; (b) be responsible for the conduct of those who perform tank tests under the licensee's direct and personal supervision; (c) keep records for three years regarding each underground storage tank owner, the results of tank tests, and the names and dates of service of those working under the licensed tank tester; and (d) have completed training from a manufacturer.

This Article states that the Board may impose civil penalties and/or take administrative action against a tank tester for violating or causing another to violate any of the regulations; failing to exercise direct and personal control over an unlicensed employee; using any method or equipment which is unsafe or for which the licensee has not received training from the manufacturer; submitting false information on an application for license or engaging in fraudulent activity during an examination; and using fraud or deception in the course of business. In addition, sanctions may be imposed for failure to: use care or good judgment while performing tank integrity tests; maintain competence; use proper tests; notify the Division of an

address change; include the licensee's name, address, and license number in advertising; possess a license while on duty; and maintain records. Violation of Section 17500 of the Business and Professions Code and the misreading or misinterpretation of test results may also result in sanctions.

Article 6. Protests and Appeals

Licenseses and applicants may appeal any decisions made by the Office of Tank Tester Licensing by sending a written request to the Division Chief within 30 days of the disputed decision. The Division Chief then makes the final division determination. If the final determination is disputed, an appeal may be made to the Board. The requirements for making an appeal to the Board are specified as well as the results of defective petitions.

Article 7. Disciplinary Proceedings

This Article specifies the grounds for disciplinary action against an applicant or licensee including civil penalties and administrative sanctions.

Article 8. Revenue

Section 25284.4(b) of the Health and Safety Code provides for the collection of fees for the licensure of tank testers. The regulations establish the following fees for the licensure of tank testers: application fee of \$100; examination fee of \$200; license fee of \$600; reexamination fee of \$200; license renewal fee of \$600; license reinstatement fee of \$200; duplicate license fee of \$10; certified copy of any license fee of \$5; and dishonored check processing fee of \$15.

Dated:

STATE WATER RESOURCES CONTROL BOARD

TMICKA/BWIGHTMAN/tm/bw

FILE NAME: DIGEST.1

DISK: C

03/10/89, 739-2494

d. Resolution No. 89-19

STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 89- 19

AMENDMENT TO EMERGENCY REGULATIONS ADOPTED BY THE
STATE BOARD FOR THE TANK TESTER LICENSING PROGRAM

WHEREAS:

1. Section 25284.4 of the Health and Safety Code requires the State Board to license underground storage tank testers.
2. Section 25284.4(e) of the Health and Safety Code directs the State Board to adopt any emergency regulations necessary to implement tank tester licensing.
3. Section 11349.6(b) of the Government Code requires the Office of Administrative Law to review emergency regulatory filings for compliance with standards of Government Code Section 11349.1.
4. The Office of Administrative Law has notified the State Board by "Decision of Disapproval of Regulatory Action" of necessary amendments to the proposed emergency regulations.
5. The State Board has made the necessary amendments to the regulations.

THEREFORE BE IT RESOLVED:

That the proposed regulations which were adopted on December 15, 1988, and which have been amended to comply with the requirement of the Office of Administrative Law, be adopted and codified in Subchapter 17 of Chapter 3 of Title 23 of the California Code of Regulations (23 CCR Sections 2730-2802).

CERTIFICATION

The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on March 16, 1989.


Maureen Marche

Administrative Assistant to the Board

e. Amended regulations,
adopted March 16, 1989

CALIFORNIA CODE OF REGULATIONS

TITLE 23 WATERS

CHAPTER 3 WATER RESOURCES CONTROL BOARD

SUBCHAPTER 17 UNDERGROUND TANK TESTER REGULATIONS

Amended and Adopted March 16, 1989

- Article 1. General Provisions
- Article 2. Administration
- Article 3. Application of Regulations
- Article 4. Licensing
- Article 5. Conduct of Business and Prohibited Acts
- Article 6. Protests and Appeals
- Article 7. Disciplinary Proceedings
- Article 8. Revenue

UNDERGROUND TANK TESTER REGULATIONS

CALIFORNIA CODE OF REGULATIONS

TITLE 23 WATERS

SUBCHAPTER 17 UNDERGROUND TANK TESTER REGULATIONS

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ARTICLE 1. GENERAL PROVISIONS

Adopt new section to read:

2730 Purpose

The Board is vested with all the functions and duties relating to the administration of the Tank Tester License Program (Section 25284.4 Health and Safety Code).

Specifically, the purpose of the Tank Tester License Program is to protect the environment and public health and safety by establishing minimum qualifications for those who test underground storage tanks and by establishing a licensing program for underground storage tank testers.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

Adopt new section to read:

2731 Definitions

- (a) "Address of record" means the address at which the licensee wishes to be contacted by the Board. The address of record is public information.

- (b) "Advertisement" means any written or printed communication, for the purpose of soliciting, describing, or promoting the licensee's business including a brochure, letter, pamphlet, newspaper, periodical, publication or other writing. Advertisement includes a radio, television, or similar airwaves transmission which solicits or promotes the licensee's business. It does not include:
 - (1) a free directory listing which does not allow space for a license number;

 - (2) any printing or writing on buildings or vehicles where the purpose of the printing is identification;

(3) any printing or writing or communications, memoranda, or any other writing used in the ordinary course of business where the purpose of the writing is other than solicitation or promotion of business.

(c) "Applicant" means any person seeking a tank tester license.

(d) "Approved course of study" means a course of study approved by the Division after being recommended by a committee appointed by the Division and which includes, but is not limited to:

(1) General principles of tank and pipeline testing.

(2) Basic understanding of the mathematics relating to tank testing.

(3) Understanding of test procedures, principles, and equipment.

(4) Knowledge of the regulations and laws governing the regulation of underground storage tanks.

(5) Proper safety procedures.

(6) Hands-on use of tank testing equipment.

Anyone who desires to provide an approved course of study shall furnish the Division with the following material:

A. A syllabus or outline of the course of study.

B. Information demonstrating that the course of study includes items listed in (d)(1)-(6), above.

C. A description of the method or methods used by the provider to determine whether the enrollee has successfully completed the course of study.

(e) "Assign" means to permit an employee or agent in his or her own name to advertise, engage clients, furnish reports, or present bills to clients, or in any manner whatsoever to conduct business for which a license is required under these regulations.

(f) "Board" as used in these regulations means the five

members of the State Water Resources Control Board.

(g) "Direct and personal supervision" means the watchful care and inspection of the conduct and performance of a tank tester by a licensee while the licensee is physically located at the work site.

(h) "Division" means the Division of the Board in which the Office of Tank Tester Licensing is located.

(i) "Fraud" or "deception" includes but is not limited to:

(1) knowingly making a false statement relating to the results of a tank integrity test or methods or information obtained in the course of employment;

(2) fabricating evidence;

(3) making a representation that any part of a tank integrity testing method or associated equipment is certified, approved, or in any way sanctioned by the Board unless the method or equipment is actually certified, approved, or sanctioned by the Board;

(4) failing to provide the services for which compensation has been received or which were agreed to by contract.

(j) "License" means a pocket card issued by the Board which authorizes the licensee to conduct the business of an underground storage tank tester. The license shall include but not be limited to the following:

(1) a clear, full-face, one inch by one inch color photograph taken within one year immediately preceding the date of filing the application;

(2) the name of the licensee;

(3) the address of record of the licensee;

(4) the license number;

(5) the expiration date of the license.

The license is the property of the Board.

(k) "Licensee" means any person licensed under these regulations as a tank tester and who possesses a

current and valid license issued by the Board.

- (l) "Local agency" means the department, office, or other agency of a county or city designated pursuant to Section 25283 of the Health and Safety Code.
- (m) "Manufacturer" means any business which produces and sells tank integrity testing equipment and which may provide training in the use of that equipment.
- (n) "Office of Tank Tester Licensing" means the unit of the Division which exercises the day-to-day functions of the Division in the Underground Tank Tester License Program.
- (o) "Qualifying Experience" means, prior to January 1, 1990, experience in all aspects of tank integrity testing including setting up and operating equipment, collecting data and producing reports, after successfully completing training from a manufacturer in the appropriate test procedures. On and after January 1, 1990, "qualifying experience" means experience in all aspects of tank integrity testing including setting up and operating equipment, collecting data and producing reports under the direct

and personal supervision of a licensed tank tester,
during which time training is successfully completed
from a manufacturer in the appropriate test procedures.

(p) "Tank integrity test" means a test method capable of
detecting an unauthorized release from an underground
storage tank consistent with the minimum standards
adopted by the Board.

(q) "Tank tester" means an individual who performs tank
integrity tests on underground storage tanks.

Authority: H&SC 25284.4

Reference: H&SC 25284.4 and 25283

ARTICLE 2. ADMINISTRATION

Adopt new section to read:

2740 Record of licensees and enforcement actions

The Office of Tank Tester Licensing shall maintain a current list of all licensed tank testers, including a record of enforcement actions taken. A roster shall be prepared showing names, addresses, and telephone numbers of record of all licensees and any enforcement actions completed. The telephone number may be omitted from the directory upon request of the licensee. One copy of the current roster of licensees shall be furnished to all local agencies after each examination administration. Additional copies of the roster of licensees shall be available to local agencies and the public on application to the Office of Tank Tester Licensing, at a price per copy sufficient to reimburse the Board for the cost of publication. A roster of enforcement actions completed will be available upon request at a price per copy sufficient to reimburse the Board for the cost of publication.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

ARTICLE 3. APPLICATION OF REGULATIONS

Adopt new section to read:

2750 Necessity of license

On and after January 1, 1990 all tank integrity tests conducted within this state, as defined in Section 2731 of Article 1, must be performed by or under the direct and personal supervision of a tank tester with a currently valid tank tester license issued pursuant to these regulations. No person shall be licensed unless that person meets requirements as specified in Article 4 of these regulations.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

Adopt new section to read:

2751 Local regulation; ordinances

The provisions of these regulations shall not prevent the local authorities of any city, and/or county from: (a) requiring tank tester licensees to meet the requirements for and obtain a local business permit; (b) requiring licensees

to register their name and file a copy of their Board-issued tank tester license with the city and/or county. No fee, other than a fee for a local business permit, may be charged nor may any application be required by the city and/or county for that registration.

Authority: H&SC 25284.4

Reference: H&SC 25299.2

ARTICLE 4. LICENSING

Adopt new section to read:

2760 License requirements

An applicant for a tank tester license shall:

- (a) demonstrate a minimum of either one year of verifiable qualifying experience testing at least fifty underground storage tanks or have successfully completed both an approved course of study as defined in Section 2731 of Article 1 and training from a manufacturer in the test procedure to be used;
- (b) for an applicant applying to take an examination during the 1989 calendar year, the applicant may document in the application specified in Subsection (c) that he or she will have completed the qualifying experience requirement prior to being issued a license on January 1, 1990. The Division may require the applicant to verify completion of qualifying experience prior to issuing a license;
- (c) file with the Division a completed application as specified in Section 2761;

(d) pay the nonrefundable application fee and the examination fee as specified in Section 2800 of Article 8;

(e) provide two color photographs as specified in Section 2731 of Article 1;

(f) pass an examination administered under the direction of the Division as specified in Section 2762;

(g) pay the license fee as specified in Section 2800 of Article 8 upon notification by the Division;

Authority: H&SC 25284.4

Reference: H&SC 25284.4

Adopt new section to read:

2761 Application for licensure

(a) Content - An application shall include:

(1) the full name and the business and residence address of the applicant and the name under which

the applicant does business;

- (2) a statement signed by a person other than the applicant under penalty of perjury, verifying either the applicant's qualifying experience as specified in Section 2760 (a) and (b) or completion of a course of study approved by the Division;
- (3) verification that the applicant was trained by the manufacturer in the principles and use of the equipment and method which the applicant used to gain his or her qualifying experience;
- (4) original signature signed under penalty of perjury and date the application was signed;
- (5) the nonrefundable application fee and the examination fee as specified in Section 2800 of Article 8.
- (6) The Division may require the submission of any additional pertinent information, evidence, statements, or documents which would support the application for licensure.

A completed application is an application that meets all of the above requirements.

- (b) Submittal - An application shall be postmarked by the final filing date set forth in the examination information and schedule. Applications postmarked after the final filing date may be held over and processed for the next scheduled examination.
- (c) Review - The Division shall review the application and supporting documents to determine the applicant's eligibility for licensure.
- (d) Notice - The Division shall notify applicants in writing within thirty (30) days of receipt of an application whether the application is complete and approved or deficient and disapproved. Such notice, if it indicates a deficiency, will state the specific information which is required to complete the application. If the application is deficient, the applicant may be scheduled for the next examination upon completion of the application.
- (e) Abandonment - If an applicant fails to complete his or her application within one year after it has been

filed, or fails to take the examination within a one-year period after becoming eligible therefore, the application shall be considered to be abandoned. An application submitted after the abandonment of a former application shall be treated as a new application and shall be required to meet all of the requirements for an initial license.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

Adopt new section to read:

2762 Examination

- (a) Content - The examination shall include: (1) general principles of tank and pipeline testing; (2) basic understanding of the mathematics relating to tank integrity testing; (3) knowledge of the regulations and laws governing underground storage tanks; and (4) proper safety procedures.
- (b) Frequency - A minimum of two examinations shall be given each year.
- (c) Dishonest conduct during examination - An applicant for

licensure as a tank tester who engages in dishonest conduct during the examination shall have his or her examination confiscated immediately and shall not have his or her examination graded and shall be denied the opportunity to take the examination at its next administration.

(d) Confidentiality of examination questions - The Office of Tank Tester Licensing examination questions are confidential. Any person who removes all or part of any examination from the examination room or area, or who conveys or exposes all or part of any examination to any other person may be disqualified as a candidate for the license for which the applicant applies and may be liable civilly and in addition may be subject to administrative sanctions under Section 2773 of Article 5.

(e) Notification of results - Within 60 days of the examination, the Division shall notify applicants in writing whether they have passed or failed the examination.

(f) Failure to pass examination; reexamination fee - If an applicant fails to pass an initial examination, he or she shall be eligible for a subsequent examination upon

both paying the reexamination fee and filing a completed application for reexamination within the time limits and conditions relating to applications for initial examinations provided in Section 2761.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

Adopt new section to read:

2763 Issuance of license, renewal and reinstatement

(a) Issuance - Upon the successful completion of the application and examination process and payment of the fees prescribed by these regulations the Division shall issue a tank tester license.

(1) Prior to January 1, 1990, all licenses shall be issued no later than December 15, 1989.

(2) On and after January 1, 1990, all licenses shall be issued within 30 days of receipt of the license fee.

(b) Renewal of licenses; notice; payment of civil penalties-

- (1) Except as otherwise prescribed in these regulations, the Division shall issue a renewal license upon submittal of a completed renewal application and payment of the renewal fee.
- (2) Each license renewal application shall state the licensee's full name, business and residence address, the name under which the licensee does business and his/her tank tester license number and shall be accompanied by two color photographs as prescribed by Section 2731 of Article 1 and the renewal fee as prescribed by Section 2800 of Article 8.
- (3) Every license issued under these regulations shall be placed on a cyclical renewal, and shall expire three years following the date of issuance or assigned renewal date. In order to implement cyclical renewal, the population of licensees shall be divided into 36 equal groups; the licenses of those in each group to expire on the last day of each successive month. The Division may extend or shorten the first term of licensure and prorate the required license fee in order to implement this cyclical renewal.

- (4) The Division shall send to each licensee a notice of renewal at least 90 calendar days prior to the expiration of each unexpired license.
- (5) At least 60 days prior to the expiration, a licensee who desires to renew his or her license shall forward to the Division a completed renewal application and renewal fee as prescribed in these regulations.
- (6) The Division shall notify licensees in writing within thirty (30) days of receipt of a license renewal application whether the renewal application is complete and approved or deficient and disapproved. Such notice, if it indicates a deficiency, shall state the specific information which is required to complete the renewal application. A renewal license shall be issued within thirty (30) days from the date of written notification that the renewal application is complete and approved.
- (7) Neither the renewal license nor the reinstatement shall be issued until any and all penalties assessed have been paid or otherwise resolved in accordance with these regulations.

(c) Notification of expiration; cessation of display - Upon the expiration of any license issued under these regulations, the holder of the license shall cease to carry the license.

(d) Reinstatement following expiration - An expired license may be reinstated within three years of the date of expiration upon the filing of a reinstatement application and payment of the renewal fee and the reinstatement fee. The Division shall notify licensees in writing within thirty (30) days of receipt of a reinstatement application whether the application is complete and approved or deficient and disapproved. Such notice, if it indicates a deficiency, shall state the specific information which is required to complete the application. A reinstated license shall be issued within thirty (30) days from the date of written notification that the reinstatement application is complete and approved.

A license which has been expired for more than three years may not be reinstated; the applicant must file for and meet all of the requirements for an initial license, including passage of the examination.

- (e) Each license reinstatement application shall state the licensee's full name, business and residence address, the name under which the licensee does business and his/her tank tester license number and shall be accompanied by two color photographs as prescribed by Section 2731 of Article 1 and the reinstatement and renewal fees as prescribed by Section 2800 of Article 8.
- (f) Suspended license; expiration and renewal; restrictions on activities - A suspended tank tester license is subject to expiration and shall be renewed as provided in this article, but renewal of the license does not entitle the licensee, while the license remains suspended and until it is reinstated, to engage in the licensed activity, or in any other activity or conduct in violation of the order or judgment by which the license was suspended.
- (g) Revoked license; expiration; reinstatement after expiration; fee - A revoked license may not be renewed or reinstated.
- (h) Assignment - A license issued under these regulations is not assignable.

(i) License denial; grounds - A license may be denied by the Division pursuant to the conditions contained in Section 2773 of Article 5.

(j) Replacement of lost, stolen or destroyed pocket cards - A pocket card which has been lost, stolen or destroyed may be replaced by the Division. A licensee may request a duplicate pocket card by submitting a written statement of facts describing the loss, theft, or destruction of the card and by submitting two color photographs as prescribed by Section 2731 of Article 1 and the duplicate license fee prescribed by Section 2800 of Article 8.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

ARTICLE 5. CONDUCT OF BUSINESS AND PROHIBITED ACTS

Adopt new section to read:

2770 Notice of change of address

A licensee shall notify the Division of any change of his or her residence address and address of record within 30 days after such change.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

Adopt new section to read:

2771 Liability of licensee; employee records; completion of training for testing method used

(a) A licensee shall at all times be responsible for the actions of those who are under the direct and personal supervision of the licensee when such persons are acting within the course and scope of their employment, with regard to actions performed in violation of these regulations or Section 25284.4 of the Health and Safety Code.

(b) Each licensee shall maintain a record of the following information for each underground storage tank for which he or she rendered service:

(1) name, address and telephone number of tank owner or operator and dates service performed;

(2) all information and data collected and reports prepared in the course of performing service as a tank tester, including but not limited to raw data, calculations and reports.

(3) a list of individuals working under the direct and personal supervision of the licensee including dates of service.

(c) Each licensee shall have completed training from a manufacturer for each test method used prior to using any test method.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

Adopt new section to read:

2772 Record retention period

Records, including those described in Section 2771, shall be retained for a period of at least three years. These records shall be available for inspection by the Division and its agents upon demand, and copies thereof, and information pertaining thereto or therein, shall be submitted to the Division upon demand.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

Adopt new section to read:

2773 Grounds for denial, suspension, probation or revocation of license and civil liability.

A tank tester may be liable civilly and in addition may be subject to administrative sanctions including, but not limited to, denial, suspension, probation, or revocation of his or her license in accordance with Subsections 25284.4 (g) and (h) of the Health and Safety Code for performing or causing another to perform, any of the following actions:

- (a) willfully or negligently violating, or causing, or allowing the violation of these regulations;
- (b) willfully or negligently failing to exercise direct and personal control over an unlicensed employee, associate, assistant, or agent during any phase of tank integrity testing;
- (c) without regard to intent or negligence, using or permitting a licensed or unlicensed employee, associate, or agent to use any method or equipment which is demonstrated to be unsafe or unreliable for tank integrity testing;
- (d) submitting false or misleading information on an application for license or engaging in fraudulent activity during the course of an examination for license;
- (e) using fraud or deception in the course of doing business as a tank tester;
- (f) failing to use reasonable care or good judgment while performing tank integrity tests;
- (g) failing to maintain competence in approved tank

integrity testing procedures;

- (h) failing to use proper tests or testing equipment to conduct tank integrity tests;
- (i) failing to notify the Division within 30 days of any change of residence address or address of record;
- (j) failing to include the licensee's name, address, and license number in any advertisement as defined in Section 2731 of Article 1;
- (k) aiding or abetting an unlicensed tank tester or assigning his or her license as defined in Section 2731 of Article 1;
- (l) failing to possess, while performing services, a license which shall be presented upon demand to the tank owner or operator, the Division or its agents or any state or local official;
- (m) failing to keep and maintain complete and correct records as described in Sections 2771 and 2772;
- (n) violating Section 17500 of the Business and Professions Code;

(o) willfully or negligently misreading or misinterpreting test results.

(p) failing to have successfully completed training from a manufacturer in the test method being used by the licensee prior to using the test method.

Authority: H&SC 25284.4

Reference: H&SC 25284.4, B&PC 17500

ARTICLE 6. PROTESTS AND APPEALS

Adopt new section to read:

2780 Action by Division

An aggrieved party who wishes to protest any discretionary decision made by the Office of Tank Tester Licensing or any violation of the time periods set forth in Article 4 may ask for a review of the decision by the Division Chief. Such protest must be in writing and mailed to the Division Chief within 30 days of the announcement of examination results or notification of an Office of Tank Tester Licensing decision or violation of the time periods set forth in Article 4. All requests must be accompanied by all evidence the aggrieved party wishes to be considered by the Division Chief and by the Board in any subsequent review.

The Division Chief shall review the evidence and the Office of Tank Tester Licensing decision and shall affirm, rescind, or modify the decision. The Division Chief's determination shall be in writing, labeled as the Division Chief's determination and shall inform the aggrieved party that the determination is final and conclusive unless, within 30 days from the date of receipt of the determination, the aggrieved party petitions the Board for review.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

Adopt new section to read:

2781 Petition for review by Board

(a) A petition for review by the Board shall contain but not be limited to the following:

- (1) name and address of petitioner;
- (2) a copy of the Office of Tank Tester Licensing decision and the Division Chief's determination which the Board is requested to review;
- (3) the date when petitioner received the Division Chief's determination;
- (4) the manner in which the petitioner is aggrieved;
- (5) the specific action by the Board which the petitioner requests;

(6) a copy of the evidence presented to the Division Chief prior to the determination;

(b) The petitioner may make a written request for a hearing before the Board for the purpose of presenting evidence not provided to and considered by the Division Chief. Any request to present evidence not provided to the Division Chief must include a statement as to why such evidence was not presented to the Division Chief for review.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

Adopt new section to read:

2782 Defective petitions

Upon receipt by the Board of a petition which does not comply with Section 2781, the Board shall notify the petitioner in what respect the petition is defective and the time within which an amended petition may be filed. If a properly amended petition is not received by the Board within the time allowed, the petition shall be dismissed unless good cause is shown for an extension of time.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

Adopt new section to read:

2783 Recommendation by Chief of the Division

A copy of the petition and any accompanying evidence and statement(s) shall be sent to the Division Chief. The Division Chief shall file a response with the Board within 20 days of the receipt of the petition.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

Adopt new section to read:

2784 Action by the Board

(a) The Board may:

(1) Refuse to review the Division Chief's determination if the petition is untimely.

(2) After review of the petition and the response of

the Division Chief:

(A) deny the petition upon a finding that the Division Chief's determination was proper;

(B) set aside or modify the Division Chief's determination;

(C) direct the Division to take appropriate action.

(b) Before taking final action, the Board may, in its discretion, hold a hearing for the purpose of oral argument or receipt of additional evidence or both, or the Board may provide for an informal meeting between the petitioner, the Division staff, and a member of the Board and such other persons as the Board deems suitable for the purpose of attempting to resolve the dispute between the petitioner and the Division.

(c) If a hearing is held, the Board shall give reasonable notice to the petitioner, the Division and other persons as the Board deems appropriate, the time and place of the hearing and of the issues to be considered. The hearing shall be conducted in a manner deemed most suitable for securing all relevant evidence without unnecessary delay.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

ARTICLE 7. DISCIPLINARY PROCEEDINGS

Adopt new section to read:

2790 Disciplinary Proceedings

A tank tester may be liable civilly in accordance with Subsection 25284.4(h) of the Health and Safety Code and, in addition, may be subject to administrative sanctions pursuant to Subsection 25284.4(g) of the Health and Safety Code for performing or causing another to perform, any of the actions specified in Section 2773 of Article 5.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

ARTICLE 8. REVENUE

Adopt new section to read:

2800 Fees

- (a) The nonrefundable application fee for an initial tank tester license is one hundred dollars (\$100).
- (b) The examination fee for a tank tester license is two hundred dollars (\$200).
- (c) The license fee for a tank tester shall not exceed six hundred dollars (\$600).
- (d) The nonrefundable reexamination fee is two hundred dollars (\$200).
- (e) The license renewal fee for a tank tester shall not exceed six hundred dollars (\$600).
- (f) The license reinstatement fee is two hundred dollars (\$200).

(g) The fee for a duplicate license, to replace a lost, stolen or destroyed license is ten dollars (\$10).

(h) The fee for the cost of a certified copy of any license or a certification of licensure is five dollars (\$5).

(i) The fee for processing a dishonored check is fifteen dollars (\$15).

Authority: H&SC 25284.4

Reference: H&SC 25284.4

Adopt new section to read:

2801 Copies of laws, rules, etc.; disposition

The Office of Tank Tester Licensing shall furnish one copy of the licensing law, rules, regulations, manuals, or guides to any applicant or licensee or other interested parties without charge.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

Adopt new section to read:

2802 Refund of fees

Application and license fees are not refundable. Examination fees may be refunded only if the application is denied or rejected by the Office of Tank Tester Licensing, the Division Chief or the Board.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

TMICKA/BWIGHTMAN/tm/bw

FILE NAME:TTLP3.REG

Disk: C

03/06/89, 739-2494

f. Errata Sheet Dated March
16, 1989

ERRATA: MARCH 16, 1989 DRAFT
UNDERGROUND TANK TESTER REGULATIONS

CALIFORNIA CODE OF REGULATIONS
TITLE 23 WATERS
CHAPTER 3 WATER RESOURCES CONTROL BOARD
SUBCHAPTER 17 UNDERGROUND TANK TESTER REGULATIONS

Pages 4.9, 4.11 and 4.12: An applicant for an initial tank tester license is required to submit two photographs because all tank tester pocket cards must contain a photograph of the licensee. Therefore, applicants for license renewal, license reinstatement and license replacement should also be required to submit two photographs. Sections 2763(b)(2), (e) and (j) should be amended accordingly. In addition, Sections 2763(b)(2) and (e) have been amended to reference Section 2800 in Article 8 when fees are referred to. The words "as prescribed in Section 2800 of Article 7" have been deleted from Section 2763(b)(1).

(Section 2763(b)(1) and (2), Page 4.9)

- (1) Except as otherwise prescribed in these regulations, the Division shall issue a renewal license upon submittal of a completed renewal application and payment of the renewal fee as ~~prescribed in Section 2800 of Article 7.~~
- (2) Each license renewal application shall state the licensee's full name, business and residence address, the name under which the licensee does business and his/her tank tester license number and shall be accompanied by two color photographs as prescribed by Section 2731 of Article 1 and the renewal fee as prescribed by Section 2800 of Article 8.

(Section 2763(e), Page 4.11)

- (e) Each license reinstatement application shall state the licensee's full name, business and residence address, the name under which the licensee does business and his/her tank tester license number and shall be accompanied by two color photographs as prescribed by Section 2731 of Article 1 and the reinstatement and renewal fees as prescribed by Section 2800 of Article 8.

(Section 2763(j), Page 4.12)

- (j) Replacement of lost, stolen or destroyed pocket cards - A pocket card which has been lost, stolen or destroyed may be replaced by the Division. A licensee may request a duplicate pocket card by submitting a written statement of facts describing the loss, theft, or destruction of the card and by submitting two color photographs as prescribed by Section 2731 of Article 1 and the duplicate license fee prescribed by Section 2800 of Article 8.

TMICKA/tm

FILENAME:ERRATA.316

DISK: C

03/14/89, 739-2494

g. Notice of Approval of
Regulatory Action (March 30,
1989)

CALIFORNIA OFFICE OF ADMINISTRATIVE LAW
SACRAMENTO, CALIFORNIA

MCD

NOTICE OF APPROVAL OF
REGULATORY ACTION
(Gov. Code, Sec. 11349.6)

In re:)
WATER RESOURCE CONTROL BOARD)
REGULATORY ACTION:)
Adopt Articles 1 through 8 and)
sections 2730 through 2802 of)
Title 23 of the California)
Code of Regulations.)
-----)

OAL File No. 89-0323-03 ER

RECEIVED

MAR 31 1989

Orig DL+G
EXECUTIVE OFFICE

cc: *Bdmbus*
gwb
gjb
dec

SUMMARY OF REGULATORY ACTION

On March 23, 1989, the State Water Resources Control Board ("Board") resubmitted the above-referenced emergency regulatory action to the Office of Administrative Law ("OAL"). The proposed regulatory action adopts Article 1-8 and sections 2730-2802 of Title 23 of the California Code of Regulations. The regulatory action establishes the underground storage tank tester licensing program.

OFFICE OF ADMINISTRATIVE LAW DECISION

OAL approves the above-referenced regulatory action.

REASON FOR DECISION

All legal requirements applicable to the proposed regulatory action were met.

DATE: 03/30/89

Gordon R. Young
Gordon R. Young
Staff Counsel

for: LINDA STOCKDALE BREWER
Director

Original: James W. Baetge, Executive Director

cc:
app.ltr

PROOF OF SERVICE BY MAIL

Name/Title James W. Baetge, Executive Director

Agency WATER RESOURCE CONTROL BOARD

Address 901 P St

City/State Sacramento CA 95814

File Number 89-0323-03 ER

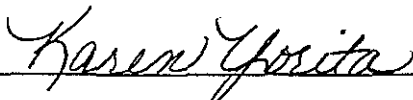
Document/Title Approval Notice

I served the above described notice for the Office of Administrative Law by depositing a copy(ies) thereof (enclosed in sealed envelope(s), postage prepaid) in the United States mail, addressed to the above named individual(s) herein, on 03/30/89, at Sacramento, California.

At the time of service, I was at least 18 years of age, a United States citizen employed in the county where the mailing occurred, and not otherwise involved in the decision. My business address is:

Office of Administrative Law
555 Capitol Mall
Suite 1290
Sacramento, Ca 95814

I declare under penalty of perjury that the foregoing is true and correct and this declaration was executed on 03/30/89, at Sacramento, California.



(Signature of declarant)

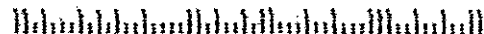
OFFICE OF ADMINISTRATIVE LAW
555 CAPITOL MALL, SUITE 1290
SACRAMENTO, CA 95814



PM METER
5028522

U.S. POSTAGE

James W. Baetge, Executive Director
State Water Resources Control Board
901 P Street
Sacramento, CA 95814



OFFICE OF ADMINISTRATIVE LAW
300 Capitol Mall, Suite 1230
Sacramento, CA 95814
(916) 323-6813

DLG
JC
UGILTS
SANDY

04/29/89

State Agency:
WATER RESOURCE CONTROL BOARD
901 P St
Sacramento, CA 95814

TITLE	SECTIONS
23	Adopt Articles 1 through 8 and
DATE FILED	sections 2730 through 2802 of
03/30/89	Title 23 of the California Code
DATE	of Regulations.
EFFECTIVE	
03/30/89	
EXPIRATION	
DATE	
REGISTER #	
89,14	

RE: 89-0323-03 ER

The enclosed regulation(s) filed by your agency for publication in the Administrative Code will be available in about five weeks. If your agency plans to distribute copies of these regulations, you should place an order with the State Printer at once to save costs (Form 67).

Heiser

RECEIVED
MAY 02 1989
OFFICE OF LEGISLATIVE AND
PUBLIC AFFAIRS

IV. Misc. Correspondence

a. To all Tank Testers and
Local Government Agencies;
November 23, 1988;
Notification of Board Workshop
and copy of proposed
regulations

STATE WATER RESOURCES CONTROL BOARD

DIVISION OF LOANS AND GRANTS

2014 T STREET

P.O. BOX 944212

SACRAMENTO, CA 94244-2120



November 23, 1988

TO ALL TANK TESTERS AND LOCAL GOVERNMENT AGENCIES

The State Water Resources Control Board will begin administering a licensing examination to underground storage tank testers in late 1989.

On January 1, 1988, Section 25284.4 was added to the Health and Safety Code by the enactment of Assembly Bill 1413 (Statutes of 1987, Chapter 1372, Cortese). This new law requires all tank integrity tests to be conducted by, or under the direct and personal supervision of, licensed tank testers on and after January 1, 1989. However, the law also permits an extension of the licensing deadline to January 1, 1990, to allow tank testers a reasonable opportunity to qualify for licensure.

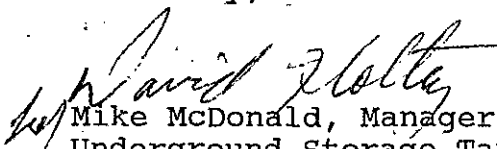
Under Section 25284.4, the Board is responsible for the administration of the Tank Tester Licensing Program including the development of necessary regulations. Proposed regulations have been drafted and are enclosed along with an Informative Digest which summarizes the content of each Article of the regulations.

An agenda for the Board's December 7-8, 1988 Workshop is enclosed (see Item 15) informing you of the date that the subject agenda item will be discussed. The workshop will provide you with an opportunity to express any concerns or provide comments before the proposed regulations are adopted by the Board.

In addition, we have enclosed a form requesting tank testers to provide their current business and residence addresses and telephone numbers so that we may include them in surveys, provide them with examination schedules, and inform them of licensing procedures. Please use the enclosed postage-paid envelope to return this form.

If you have questions about the workshop, please call Jasmine Medina at (916) 739-4348.

Sincerely,


Mike McDonald, Manager
Underground Storage Tank Program
Division of Loans and Grants

Enclosures (4)

STATE WATER RESOURCES CONTROL BOARD
TANK TESTER LICENSING PROGRAM

Please provide the following information and return this form in the enclosed postage-paid envelope. Please indicate below whether you are interested in receiving further information regarding the Tank Tester Licensing Program and/or becoming licensed.

(PLEASE PRINT)

Name: _____
 (last) (first)

Business Address

Company Name: _____

Street Address: _____

City, State, Zip: _____

Telephone Number: () _____

Home Address

Street Address: _____

City, State, Zip: _____

Telephone Number: ()

Do you intend to become a licensed tank tester? YES_____ NO_____

Are you interested in receiving further information regarding tank
tester licensing?

YES NO

The Chief of the Division of Loans and Grants, State Water Resources Control Board is responsible for maintaining the information in this survey form. The Division's address and telephone number are P. O. Box 944212, Sacramento, California, 94244-2120, (916) 739-4348. The authority for maintaining the requested information is Chapter 6.7, Section 25284.4 of the Health and Safety Code. The submission of the requested information is voluntary. The information will be used to contact potential licensees and may be transferred to other intergovernmental agencies. Failure to provide the information may prevent the Division from disseminating necessary examination and licensing information. Individuals have the right to review the records maintained on them by the agencies, unless the records are exempted by Section 1798.40 of the Civil Code.

STATE WATER RESOURCES CONTROL BOARD WORKSHOP AGENDA

Wednesday and Thursday
December 7-8, 1988 - 10:00 A.M.
First-Floor Hearing Room
Paul R. Bonderson Building
901 P Street, Sacramento

Questions regarding this agenda - call Maureen Marche' (916) 445-5240

Workshop includes informal discussion of items to be presented for action at a future business meeting. People who are interested in items on the agenda are urged to attend workshops as they may miss valuable discussion that will not be repeated at the Board meeting. NOTE: There is no voting at workshops. Items requiring Board action must come to a Board meeting. Items will be discussed during their scheduled time period unless there is insufficient time to do so, in which case they will be carried over to the next period.

ITEMS 1-2 WILL BE DISCUSSED BETWEEN 10:00 A.M. - NOON ON WEDNESDAY, DECEMBER 7

PUBLIC FORUM

1. Public Forum. (Any member of the public may address and ask questions of the Board relating to any matter within the Board's jurisdiction. This need not be related to any item on the agenda.)

LOANS & GRANTS

2. Proposed Extension of the Federal Fiscal Year (FFY) 1988 Clean Water Grant Project Priority List and Proposed FFY 1989 State Revolving Fund Loan Program Priority List. (The Board will be asked, at a Board meeting, whether to adopt resolutions (1) extending the Clean Water Grant list, and (2) approving the State Revolving Fund list.)

ITEMS 3-10 WILL BE DISCUSSED BETWEEN 1:30P.M.~ 5:00P.M. ON WEDNESDAY, DECEMBER 7

DIVISION OF WATER QUALITY

3. Consideration of Acceptance of the Division of Water Quality, Planning and Standards Development Branch's Phase I 205(j)(2) Final Report, Entitled Sacramento River Toxic Chemical Risk Assessment Project: Final Report, as completion of the "Sacramento River Toxic Chemical Risk Assessment Project". (The Board will be asked, at a Board meeting, whether to accept the final report as completion of the Phase I project and to transmit the final report to EPA.)

4. Consideration of Close-Out of Phase I of the Subsection 205(j) Water Quality Management Planning Program. (The Board will be asked, at a Board meeting, whether to approve close-out of the Subsection 205(j) Phase I Grant No. C-060000-21-3 and to transmit to EPA for close-out.)

WATER RIGHTS

5. Proposed Resolution Finding that Additional Time is Necessary to Determine the Effect on Instream Uses and Requiring Time Schedule for Completion of Project Studies for Application of Envirohydro, Incorporated, to Appropriate Water From Wallace Canyon Creek in Placer County. (The Board will be asked, at a Board meeting, whether to adopt the proposed resolution.

6. Proposed Resolution Approving Addition of the Stateline Erosion Control Subproject to the Subprojects List of the Lake Tahoe Remedial Erosion and Urban Runoff Control Project Under the State Assistance Program. (The Board will be asked, at a Board meeting, whether to adopt the proposed resolution.)

--over--

EXECUTIVE DIRECTOR'S REPORT

7. Summary of Major Board Activities. (Information Item)

CLOSED SESSION -- WATER RIGHTS (Note: Closed Sessions are not open to the public)

8. Proposed Order on Water Right License of Waterman and Waller to Appropriate Water From Mule Creek in Trinity County. (The Board will be meeting in closed session to discuss evidence taken at a hearing. This is authorized under Government Code Section 11126(d).)

9. Proposed Order on Petition for Extension of Time for Water Right Permit of George Fotinos, et al, in Napa County. (The Board will be meeting in closed session to discuss evidence taken at a hearing. This is authorized under Government Code Section 11126(d).)

CLOSED SESSION -- LITIGATION (Note: Closed Sessions are not open to the public)

10. The Board will be meeting in closed session to discuss Sierra Club v. State Water Resources Control Board, Respondent; and California Regional Water Quality Control Board, San Francisco Bay Region, and Union Oil Company of California, Real Parties in Interest, Sacramento County Superior Court Case No. 356793.. (This is authorized under Government Code Section 11126(q)(1).)

ITEMS 11-15 WILL BE DISCUSSED STARTING AT 10:00 A.M. ON THURSDAY, DECEMBER 8

PUBLIC FORUM

11. Public Forum. (Any member of the public may address and ask questions of the Board relating to any matter within the Board's jurisdiction. This need not be related to any item on the agenda.)

LOANS & GRANTS

12. Hearing on Agricultural Drainage Water Management Loan Program; Consideration of Research Findings Pertaining to Agricultural Drainage Water Management Units; Assembly Bill No. 2875. (The Board will be asked, at a Board meeting, whether to reaffirm the loan funding requests.)

13. Consideration of Authorization to Extend Eleven Local Agency Pilot Program Contracts and to Negotiate and Execute Pilot Program Contracts With Additional Agencies to Oversee Leaking Underground Tank Storage Site Investigation and Cleanup. (The Board will be asked, at a Board meeting, whether to adopt a resolution (1) extending the aforementioned existing pilot program contracts and (2) authorizing negotiation and execution of new pilot program contracts.)

14. Request by the City of Corcoran for an Increase in Their Water Quality Control Fund Loan. (The Board will be asked, at a Board meeting, whether to adopt a resolution approving the increase.)

15. Consideration of: (1) Emergency Regulations to Implement, Interpret and Make Specific the Provisions of Section 25284.4 of the Health and Safety Code Concerning Licensure of Tank Testers, and (2) Resolution Granting Tank Testers One Year, Beginning January 1, 1989, to Acquire Qualifying Experience for Licensure. (The Board will be asked, at a Board meeting, whether to adopt resolutions approving the proposed regulations and granting tank testers one year to acquire qualifying experience.)

Following the meetings on December 7-8, 1988, the Board may meet to discuss budget matters. There will be no voting.

Closed Session -- Please note Closed Sessions are not open to the public.

On December 7-8, 1988, the Board will be meeting in closed session to discuss personnel matters. (Authorized under Government Code Section 11126(a).)

Attachment A

INFORMATIVE DIGEST

Section 25284.4 was added to Chapter 6.7 of the Health and Safety Code by Chapter 1372, Statutes of 1987 (AB 1413, Cortese). Under Section 25284.4, the Board is vested with responsibility for the administration of the Tank Tester Licensing Program. Specifically, the State Board must protect the environment and public health and safety by certifying the qualifications and competency of individuals testing underground storage tanks.

Section 25284.4 requires all tank integrity tests to be conducted by, or under the direct and personal supervision of, licensed tank testers on and after January 1, 1989. Section 25284.4(a) of the Health and Safety Code permits an extension of the licensing deadline to January 1, 1990 to allow tank testers a reasonable opportunity to qualify for licensure. Section 25284.4(e) of the Health and Safety Code directs the State Board to adopt any emergency regulations necessary to implement tank tester licensing.

Summary of Proposed Regulations

Article 1. General Provisions

The regulations implement, interpret, and make specific the provisions of Section 25284.4 of the Health and Safety Code. The regulations also include definitions for the terms used in the regulations and in statute.

Article 2. Administration

Under this Article, the State Board is required to keep records regarding all licensed tank testers and any enforcement actions taken against them. The State Board must furnish lists of new licensees to all local agencies after each examination and licensing process. It must also make lists of enforcement actions available upon request and payment of a duplication fee.

Article 3. Application of Regulations

Persons who conduct or directly supervise underground storage tank

Attachment A

tests on and after January 1, 1990, must be licensed by the Board. Local agencies may require tank testers to file a copy of their State Board-issued license with the local agency, but may not require an application or fee for such filing. They may require a local business permit

Article 4. Licensing

Applicants for a tank tester license must possess a minimum of one year of qualifying experience or must complete an approved course of study. They must file an application and fee, include two colored photographs, and pass an examination administered by the State Board.

This Article specifies the: (a) content of the application and examination; (b) timeframe in which the application must be filed; (c) nature of the Board's review and notice to the applicant; (d) confidentiality of the application content; (e) provisions for abandonment of the application; (f) examination frequency; (g) penalties for dishonest conduct during an examination; (h) provisions for re-examination after failure; (i) issuance of an initial license, renewal or reinstatement; (j) licensee's responsibility if the license is expired, suspended or revoked; (k) prohibition against assignment of licenses; and (l) license denial.

Article 5. Conduct of Business and Prohibited Acts

Licensees are required to: a) notify the State Board of any change of residence address or address of record within 30 days of the change; (b) be responsible for the conduct of those who perform tank tests under the licensee's direct and personal supervision; (c) keep records for three years regarding each underground storage tank owner, the results of tank tests, and the names and dates of service of those working under the licensed tank tester.

This Article also specifies the grounds for disciplinary action against an applicant or licensee including, denial, suspension, probation, revocation, or monetary civil and administrative sanctions.

Article 6. Protests and Appeals

Licensees and applicants may appeal any decisions made by the Office of Tank Tester Licensing by sending a written request to the division within 30 days of the disputed decision. Division staff reviews the appeal and makes a recommendation to the division chief who then makes the final division decision. If the final division

Attachment A

decision is disputed, an appeal may be made to the State Board. The requirements for making an appeal to the Board are specified as well as the results of defective petitions.

Article 7. Disciplinary Proceedings

This Article states that the Board may take civil and administrative action against a tank tester for violating or causing another to violate any of the regulations; failing to exercise direct and personal control over an unlicensed employee; using any method or equipment which is unsafe; submitting false information on an application for license or engaging in fraudulent activity during an examination; using fraud or deception in the course of business. In addition, sanctions may be imposed for failure to: use care or good judgment while performing tank integrity tests; maintain competence; use proper tests; notify the division of an address change; include the license name, address, and license number in advertising; possess a license while on duty; and maintain records. Violation of Section 17500 of the Business and Professions Code and the misreading or misinterpretation of test results may also result in sanctions

Article 8. Revenue

Section 25284.4(b) of the Health and Safety Code provides for the collection of fees for the licensure of tank testers. The regulations establish the following fees for the licensure of tank testers: application fee of \$100; examination fee of \$200; license fee of \$600; reexamination fee of \$200; license renewal fee of \$600; license reinstatement fee of \$200; duplicate license fee of \$10; certified copy of any license fee of \$5; and dishonored check processing fee of \$15.

Dated:

STATE WATER RESOURCES CONTROL BOARD

November 18, 1988

Attachment 1

CALIFORNIA CODE OF REGULATIONS
TITLE 23 WATERS
CHAPTER 3 WATER RESOURCES CONTROL BOARD
SUBCHAPTER 16 UNDERGROUND TANK TESTER REGULATIONS

Adopted December __, 1988

- Article 1. General Provisions
- Article 2. Administration
- Article 3. Application of Regulations
- Article 4. Licensing
- Article 5. Conduct of Business and Prohibited Acts
- Article 6. Protests and Appeals
- Article 7. Disciplinary Proceedings
- Article 8. Revenue

November 18, 1988

UNDERGROUND TANK TESTER REGULATIONS

CALIFORNIA CODE OF REGULATIONS

TITLE 23 WATERS

SUBCHAPTER 16 UNDERGROUND TANK TESTER REGULATIONS

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2731 Definitions

Article 2. ADMINISTRATION

2740 Record of licensees and enforcement actions

2741 Delegation of duties

Article 3. APPLICATION OF REGULATIONS

2750 Necessity of license

2751 Local regulation; ordinances

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2760 License requirements

2761 Application for licensure

2762 Examination

2763 Issuance of license, renewal and reinstatement

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2771 Liability of licensee; employee records

2772 Record retention period

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2784 Action by the Board

November 18, 1988

Article 7. DISCIPLINARY PROCEEDINGS

2790 Disciplinary Proceedings

Article 8. REVENUE

2800 Fees

2801 Copies of laws, regulations, etc.

2802 Refund of fees

DRAFT

ARTICLE 1. GENERAL PROVISIONS

Adopt new section to read:

2730 Purpose

The Board is vested with all the functions and duties relating to the administration of the Tank Tester License Program (Section 25284.4 Health and Safety Code).
Specifically, the purpose of the Tank Tester License Program is to protect the environment and public health and safety by certifying the qualifications and competency of individuals testing underground storage tanks.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

Adopt new section to read:

2731 Definitions

(a) "Address of record" means the address at which the licensee wishes to be contacted by the Board. The address of record is public information.

(b) "Advertisement" means any written or printed communication, for the purpose of soliciting, describing, or promoting the licensee's business including a brochure, letter, pamphlet, newspaper, periodical, publication or other writing. Advertisement includes a radio, television, or similar airwaves transmission which solicits or promotes the licensee's business. It does not include:

(1) a free directory listing which does not allow space for a license number;

(2) any printing or writing on buildings or vehicles where the purpose of the printing is identification;

(3) any printing or writing or communications, memoranda, or any other writing-used in the ordinary course of business where the purpose of the writing is other than solicitation or promotion of business.

(c) "Applicant" means any person seeking a tank tester license.

(d) "Approved course of study" means a course of study approved by the Division after being recommended by a committee appointed by the division and which includes, but is not limited to:

(1) General principles of tank and pipeline testing.

(2) Basic understanding of the mathematics relating to tank testing.

(3) Understanding of the specific test procedures, principles, and equipment for which the tank tester will be qualified to operate.

(4) Knowledge of the regulations and laws governing the regulation of underground storage tanks.

(5) Proper safety procedures.

(6) Hands-on use of tank testing equipment.

Anyone who desires to offer an approved course of study shall submit to the division a completed form provided by the division.

(e) "Assign" means to permit an employee or agent in his

or her own name to advertise, engage clients, furnish reports, or present bills to clients, or in any manner whatsoever to conduct business for which a license is required under these regulations.

(f) "Board" as used in these regulations means the five members of the State Water Resources Control Board.

(g) "Direct and personal supervision" means the watchful care and inspection of the conduct and performance of a tank tester by a licensee while the licensee is physically located at the work site.

(h) "Division" means the division of the Board in which the Office of Tank Tester Licensing is located.

(i) "Fraud" or "deception" includes but is not limited to:

(1) knowingly making a false statement relating to the results of a tank test or methods or information obtained in the course of employment;

(2) manufacturing evidence;

(3) making a representation that any part of a tank testing method or associated equipment is

certified, approved, or in any way sanctioned by the Board unless the method or equipment is actually certified, approved, or sanctioned by the Board;

(4) failing to provide the services for which compensation has been received or which were agreed to by contract.

(j) "License" means a pocket card issued by the Board which authorizes the licensee to conduct the business of an underground storage tank tester. The license shall include but not be limited to the following:

(1) a clear, full-face, one inch by one inch color photograph taken within one year immediately preceding the date of filing the application;

(2) the name of the licensee;

(3) the address of record of the licensee;

(4) the license number;

(5) the expiration date of the license.

The license is the property of the Board.

- (k) "Licensee" means any person licensed under these regulations as a tank tester and who possesses a current and valid license issued by the Board.
- (l) "Local agency" means the department, office, or other agency of a county or city designated pursuant to Section 25283 of the Health and Safety Code.
- (m) "Manufacturer" means any business involved in the production of, sale of or training for tank testing equipment.
- (n) "Office of Tank Tester Licensing" means the unit of the division which exercises the day-to-day functions of the division in the Underground Tank Tester License Program.
- (o) "Qualifying Experience" means, prior to January 1, 1990, experience in all aspects of tank testing including setting up and operating equipment, collecting data and producing reports, after successfully completing training and certification from a manufacturer in the appropriate test procedures. On and after January 1, 1990, "qualifying experience"

November 18, 1988

means experience in all aspects of tank testing including setting up and operating equipment, collecting data and producing reports under the direct and personnel supervision of a licensed tank tester, during which time training and certification is successfully completed from a manufacturer in the appropriate test procedures.

(p) "Tank integrity test" means a test method capable of detecting an unauthorized release from an underground storage tank consistent with the minimum standards adopted by the board.

(g) "Tank tester" means an individual who performs tank integrity tests on underground storage tanks.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

ARTICLE 2. ADMINISTRATION

Adopt new section to read:

2740 Record of licensees and enforcement actions

The Office of Tank Tester Licensing shall maintain a current list of all licensed tank testers, including a record of enforcement actions taken. A roster shall be prepared showing names, addresses, and telephone numbers of record of all licensees and any enforcement actions completed. The telephone number may be omitted from the directory upon request of the licensee. One copy of the current roster of licensees shall be furnished to all local agencies after each examination administration. Additional copies of the roster of licensees shall be available to local agencies and the public on application to the Office of Tank Tester Licensing, at a price per copy sufficient to reimburse the Board for the cost of publication. A roster of enforcement actions completed will be available upon request at a price per copy sufficient to reimburse the Board for the cost of publication.

All records of the board pertaining to licensees shall be public records except confidential letters of reference,

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application information, examination material,
investigation files, and those documents exempt pursuant to
the Information Practices Act [Chapter 1 (commencing with
Section 1798 of Title 1.8 of Part 4 of Division 37 the Civil
Code)] and the Public Records Act [Chapter 3.5 (commencing
with Section 6250) of Division 7 of Title 1 of the
Government Code].

Authority: H&SC 25284.4

Reference: H&SC 25284.4

ARTICLE 3. APPLICATION OF REGULATIONS

Adopt new section to read:

2750 Necessity of license

On and after January 1, 1990 all tank tests conducted within this state, as defined in Section 2731 of Article 1, must be performed under the direct and personal supervision of a tank tester with a currently valid tank tester license issued pursuant to these regulations. No person shall be licensed unless that person meets requirements as specified in Article 4 of these regulations.

Adopt new section to read:

2751 Local regulation; ordinances

The provisions of these regulations shall not prevent the local authorities of any city, and/or county from: (a) requiring tank tester licensees to meet the requirements for and obtain a local business permit; (b) requiring licensees to register their name and file a copy of their Board-issued tank tester license with the city and/or county. No fee, other than a fee for a local business permit, may be

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charged nor may any application be required by the city
and/or county for that registration.

Authority: H&SC 25284.4

Reference: H&SC 25299.2

DRAFT

ARTICLE 4. LICENSING

Adopt new section to read:

2760 License requirements

An applicant for a tank tester license shall:

- (a) demonstrate a minimum of either one year of verifiable qualifying experience testing at least fifty underground storage tanks or have successfully completed an approved course of study as defined in Section 2731 of Article 1;
- (b) for an applicant applying to take an examination during the 1989 calendar year, the applicant may document in the application specified in Subsection (c) that he or she will have completed the qualifying experience requirement prior to being issued a license on January 1, 1990. The division may require the applicant to verify completion of qualifying experience prior to issuing a license;
- (c) file with the division a completed application as specified in Section 2761;

- (d) pay the nonrefundable application fee and the nonrefundable examination fee as specified in Section 2800 of Article 8;
- (e) provide two color photographs as specified in Section 2731 of Article 1;
- (f) pass an examination administered under the direction of the division as specified in Section 2762;
- (g) pay the license fee as specified in Section 2800 of Article 8 upon notification by the division;
- (h) Not have been found guilty or have had disciplinary action taken by any local, state or federal agency for any action directly related to the functions and duties of a tank tester.

Adopt new section to read:

2761 Application for licensure

- (a) Content - An application shall be completed on a form provided by the division and shall include but not be limited to:

- (1) the full name and the business and residence address of the applicant and the name under which the applicant does business;
- (2) a statement signed under penalty of perjury, verifying the applicant's qualifying experience as specified in Section 2670 (a) and (b) or a certificate of satisfactory completion of a course of study approved by the Board;
- (3) a certificate from a manufacturer certifying that the applicant was trained in the use of the equipment and method which the applicant used to gain his or her qualifying experience;
- (4) original signature and date the application was signed;
- (5) the nonrefundable application fee and the nonrefundable examination fee as specified in Section 2800 of Article 8.
- (6) The division may require the submission of any additional pertinent information, evidence, statements, or documents which would support the

application for licensure.

A completed application is an application that meets all of the above requirements.

(b) Submittal - An application shall be postmarked by the final filing date set forth in the examination information and schedule. Applications postmarked after the final filing date will be held over and processed for the next scheduled examination.

(c) Review - The division shall review the application and supporting documents, to determine the applicant's eligibility for licensure.

(d) Notice - The division shall notify applicants in writing within thirty (30) days of receipt of an application whether the application is complete and approved or deficient and disapproved. Such notice, if it indicates a deficiency, will state the specific information which is required to complete the application. If the application is deficient, the applicant may be scheduled for the next examination upon completion of the application.

(e) Confidential information - All information on the application shall be confidential pursuant to the Information Practices Act [Chapter 1 (commencing with Section 1798 of Title 1.8 of Part 4 of division 3 of the Civil Code)] and shall not be released to the public.

(f) Abandonment - If an applicant fails to complete his or her application within one year after it has been filed, or fails to take the examination within a one-year period after becoming eligible therefore, the application shall be considered to be abandoned. An application submitted after the abandonment of a former application shall be treated as a new application and shall be required to meet all of the requirements for an initial license.

2762 Examination

(a) Content - The examination shall include: (1) general principles of tank and pipeline testing; (2) basic understanding of the mathematics relating to tank testing; (3) understanding of the specific test procedures, principles and equipment which the tank tester will be qualified to operate; (4) knowledge of the regulations and laws governing underground storage

tanks; and (5) proper safety procedures.

(b) Frequency - A minimum of two examinations shall be given each year.

(c) Dishonest conduct during examination - An applicant for licensure as a tank tester who engages in dishonest conduct during the examination shall have his or her examination confiscated immediately and shall not have his or her examination graded and shall be denied the opportunity to take the examination at its next administration.

(d) Confidentiality of examination questions - The Office of Tank Tester Licensing examination questions are confidential. Any person who removes all or part of any examination from the examination-room or area, or who conveys or exposes all or part of any examination to any other person may be disqualified as a candidate for the license for which the applicant applies and may be subject to administrative civil liability under Section 2773 of Article 5.

(e) Notification of results - The division shall notify applicants, in writing, of the results of the

examination.

- (f) Failure to pass examination; reexamination fee - If an applicant fails to pass an initial examination, he or she shall be eligible for a subsequent examination upon both paying the reexamination fee and filing a completed application for reexamination within the time limits and conditions relating to applications for initial examinations provided in Section 2761

2763 Issuance of license, renewal and reinstatement

- (a) Issuance - Upon the successful completion of the application and examination process and payment of the fees prescribed by these regulations the division shall issue a tank tester license.

- (b) Renewal of licenses; notice; payment of civil penalties -

- (1) Except as otherwise prescribed in these regulations, the division shall issue a renewal license upon submittal of a completed renewal application and payment of the renewal fee as prescribed in Section 2800 of Article 7. The renewal application shall be on a form provided by

the division.

(2) Every license issued under these regulations shall be placed on a cyclical renewal, and shall expire three years following the date of issuance or assigned renewal date. In order to implement cyclical renewal, the population of licensees shall be divided into 36 equal groups; the licenses of those in each group to expire on the last day of each successive month. The division may extend or shorten the first term of licensure and prorate the required license fee in order to implement this cyclical renewal.

(3) The division shall send to each licensee a notice of renewal at least 90 calendar days prior to the expiration of each unexpired license.

(4) At least 60 days prior to the expiration, a licensee who desires to renew his or her license shall forward to the division a completed renewal form and renewal fee as prescribed in these regulations.

(5) Neither the renewal license nor the reinstatement shall be issued until any and all penalties

assessed have been paid or otherwise resolved in accordance with these regulations.

(c) Notification of expiration; cessation of display - Upon the expiration of any license issued under these regulations, the holder of the license shall cease to carry the license and shall immediately return the license to the division.

(d) Reinstatement following expiration - an expired license may be reinstated within three years of the date of expiration upon the filing a reinstatement application and payment of the renewal fee and the reinstatement fee. A license which has been expired for more than three years may not be reinstated; the applicant must file for and meet all of the requirements for an initial license, including passage of the examination.

(e) Suspended license; expiration and renewal; restrictions on activities - A suspended tank tester license is subject to expiration and shall be renewed as provided in this article, but renewal of the license does not entitle the licensee, while the license remains suspended and until it is reinstated, to engage in the licensed activity, or in any other activity or conduct

in violation of the order or judgment by which the
license was suspended.

(f) Revoked license; expiration; reinstatement after
expiration; fee - A revoked license may not be renewed
or reinstated.

(g) Assignment - A license issued under these regulations
is not assignable.

(h) License denial; grounds - A license may be denied by
the division pursuant to the conditions contained in
Section 27x3 of Article 5.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

ARTICLE 5. CONDUCT OF BUSINESS AND PROHIBITED ACTS

Adopt new section to read:

2770 Notice of change of address

A licensee shall notify the division of any change of his
or her residence address and address of record within 30
days after such change.

2771 Liability of licensee; employee records

- (a) A licensee shall at all times be responsible for the actions of those who are under the direct and personal supervision of the licensee when such persons are acting within the course and scope of their employment, with regard to actions performed in violation of these regulations or Section 25284.4 of the Health and Safety Code.
- (b) Each licensee shall maintain a record of the following information for each underground storage tank for which he or she rendered service:
- (1) name, address and telephone number of tank owner or operator and dates service performed;
 - (2) all information and data collected and reports prepared in the course of performing service as a tank tester, including but not limited to raw data, calculations and reports.
 - (3) a list of individuals working under the direct and personal supervision of the licensee including dates of service.

2772 Record retention period

Records, including those described in Section 2771, shall be retained for a period of at least three years. These records shall be available for inspection by the division and its agents upon demand, and copies thereof, and information pertaining thereto or therein, shall be submitted to the division upon demand.

2773 Grounds for denial, suspension, probation or revocation of license, reprimand and civil liability.

A tank tester may be liable civilly or administratively and subject to disciplinary action including, but not limited to, denial, suspension, probation, or revocation of his or her license in accordance with Subsections 25284.4 (g) and (h) of the Health and Safety Code for performing or causing another to perform, any of the following actions:

(a) willfully or negligently violating, or causing, or allowing the violation of these regulations;

(b) willfully or negligently failing to exercise direct and personal control over an unlicensed employee;

associate, assistant, or agent during any phase of tank integrity testing;

(c) without regard to intent or negligence, using or permitting a licensed or unlicensed employee, associate, or agent to use any method or equipment which is demonstrated to be unsafe or unreliable for tank integrity testing;

(d) submitting false or misleading information on an application for license or engaging in fraudulent activity during the course of an examination for license;

(e) using fraud or deception in the course of doing business as a tank tester;

(f) failing to use reasonable care or good judgment while performing tank integrity tests;

(g) failing to maintain competence in approved tank testing procedures;

(h) failing to use proper tests or testing equipment to conduct tank integrity tests;

- (i) failing to notify the division within 30 days of any change of residence address or address of record;
- (j) failing to include the licensee's name, address, and license number in any advertisement as defined in Section 2731 of Article 1;
- (k) aiding or abetting an unlicensed tank tester or assigning his or her license in Section 2731 of Article 1;
- (l) failing to possess, while performing services, a license which shall be presented upon demand to the tank owner or operator, the division or its agents or any state or local official;
- (m) failing to keep and maintain complete and correct records as described in Sections 2771 and 2772;
- (n) violating Section 17500 of the Business and Professions Code;
- (o) willfully or negligently misreading or misinterpreting test results.

Authority: M&SC 25284.4

Reference: H&SC 25284..4

ARTICLE 6. PROTESTS AND APPEALS

Adopt new section to read:

2780 Action by division

An aggrieved party who wishes to protest any discretionary decision made by the Office of Tank Tester Licensing or any violation of the time periods set forth in Article 4 may ask for a review of the decision by the division staff. Such protest must be mailed to the division in writing within 30 days of the announcement of examination results or notification of an Office of Tank Tester Licensing decision or violation of the time periods set forth in Article 4.

All requests must be accompanied by all evidence the aggrieved party wishes to be considered by the division and by the State Board in any subsequent review.

The chief of the division shall review the evidence and the staff recommendation and shall make a final decision. Such decision shall be in writing, labeled as the final decision

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of the division and shall inform the aggrieved party that said decision is final and conclusive unless, within 30 days from the date of receipt of the decision, the aggrieved party petitions the State Board for review.

Adopt new section to read:

2781 Petition for review by State Board

(a) A petition for review by the State Board shall contain but not be limited to the following:

(1) name and address of petitioner;

(2) a copy of the specific final decision of the division which the State Board is requested to review;

(3) the date when petitioner received the State Board's final decision;

(4) the manner in which the petitioner is aggrieved;

(5) the specific action by the State Board which the petitioner requests;

(6) a statement of the evidence presented to the State Board prior to the final decision;

(b) The petitioner may make a written request for a hearing before the State Board for the purpose of presenting evidence not considered by the division. Any request to present evidence not provided to the division must include a statement as to why such evidence was not presented to the division for its review.

Adopt new section to read:

2782 Defective petitions

Upon receipt by the State Board of a petition which does not comply with Section 2782, the State Board shall notify the petitioner in what respect the petition is defective and the time within which an amended petition may be filed. If a properly amended petition is not received by the State Board within the time allowed, the petition shall be dismissed unless good cause is shown for an extension of time.

Adopt new section to read:

2783 Recommendation by Chief of the Division

A copy of the petition and any accompanying evidence and statement(s) shall be sent to the chief of the division. The chief of the division shall file a response with the State Board within 20 days of the receipt thereof.

Adopt new section to read:

2784 Action by division

(a) The State Board may:

(1) Refuse to review the final decision of the division if the petition is untimely.

(2) After review of the petition and the response of the division chief:

(A) deny the petition upon a finding that the final decision of the division was proper;

(B) set aside or modify the division's final decision;

(C) direct the division to take appropriate

action.

(b) Before taking final action, the State Board may, in its discretion, hold a hearing for the purpose of oral argument or receipt of additional evidence or both, or the State Board may provide for an informal meeting between the petitioner, the division, and a member of the State Board and such other persons as the State Board deems suitable for the purpose of attempting to resolve the dispute between the petitioner and the division.

(c) If a hearing is held, the State Board shall give reasonable notice to the petitioner, the division and other persons as the State Board deems appropriate, the time and place of the hearing and of the issues to be considered. The hearing shall be conducted in a manner deemed most suitable for securing all relevant evidence without unnecessary delay.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

ARTICLE 7. DISCIPLINARY PROCEEDINGS

Adopt new section to read:

2790 Disciplinary Proceedings

A tank tester may be liable civilly in accordance with Subsection 25284.4 (h) of the Health and Safety Code and, in addition, may be subject to administrative sanctions pursuant to Subsection 25284.4 (g) of the Health and Safety Code for performing or causing another to perform, any of the actions specified in Section 2773 of Article 5.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

ARTICLE 8. REVENUE

Adopt new section to read:

2800 Fees

(a) The nonrefundable application fee for an initial tank tester license is one hundred dollars (\$100).

(b) The nonrefundable examination fee for a tank tester license is two hundred dollars (\$200).

(c) The license fee for a tank tester shall not exceed six hundred dollars (\$600).

(d) The nonrefundable reexamination fee is two hundred dollars (\$200).

(e) The license renewal fee for a tank tester shall not exceed six hundred dollars (\$600).

(f) The license reinstatement fee shall not exceed two hundred dollars (\$200).

(g) The fee for a duplicate license, to replace a lost, stolen or destroyed license is ten dollars (\$10).

(h) The fee for the cost of a certified copy of any license or a certification of licensure is five dollars (\$5).

(i) The fee for processing a dishonored check is fifteen dollars (\$15).

2801 Copies of laws, rules, etc.; disposition

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The Office of Tank Tester Licensing shall furnish one copy of the licensing law, rules, regulations, manuals, or guides to any applicant or licensee or other interested parties without charge.

2802 Refund of fees

Fees shall not be refunded except in accordance with Article 4.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

b. State Water Resources
Control Board Meeting

STATE WATER RESOURCES CONTROL BOARD MEETING

Thursday
December 15, 1988 - 9:00 a.m.
First-Floor Hearing Room
Paul R. Bonderson Building
901 P Street, Sacramento

Questions regarding this agenda - call Maureen Marche' (916) 445-5240

Declaration of Quorum

MINUTES

1. Consideration of the Minutes of the October 5, October 20, November 2 and November 15, 1988 Board Meetings.

PUBLIC FORUM

2. Public Forum. (Any member of the public may address and ask questions of the Board relating to any matter within the Board's jurisdiction. This need not be related to any item on the agenda.)

UNCONTESTED ITEMS

3-7. The Board will be asked to approve items 3-7 at one time. (See below for description of items.)

LOANS & GRANTS

8. Proposed Extension of the Federal Fiscal Year (FFY) 1988 Clean Waster Grant Project Priority List and Proposed FFY 1989 State Revolving Fund Loan Program Priority List. (The Board will be asked whether to adopt resolutions (1) extending the Clean Water Grant list, and (2) approving the State Revolving Fund list.)

9. Agricultural Drainage Water Management Loan Program; Consideration of Research Findings Pertaining to Agricultural Drainage Water Management Units; Assembly Bill No. 2875. (The Board will be asked whether to reaffirm the loan funding requests.)

10. Consideration of: (1) Emergency Regulations to Implement, Interpret and Make Specific the Provisions of Section 25284.4 of the Health and Safety Code Concerning Licensure of Tank Testers, and (2) Resolution Granting Tank Testers One Year, Beginning January 1, 1989, to Acquire Qualifying Experience for Licensure. (The Board will be asked whether to adopt resolutions approving the proposed regulations and granting tank testers one year to acquire qualifying experience.)

WATER RIGHTS

11. Proposed Order on Water Right License of Waterman and Waller to Appropriate Water From Mule Creek in Trinity County. (The Board will be asked whether to adopt the proposed order.)

12. Proposed Order on Petition for Extension of Time for Water Right Permit of George Fotinos, et al, in Napa County. (The Board will be asked whether to adopt the proposed order.)

HEARING -- WATER QUALITY STAY REQUEST

13. In the matter of the Petition of International Business Machines for Review of Site Cleanup Requirements, Order No. 88-157 of the California Regional Water Quality Control Board, San Francisco Bay Region. Our File No. A-588. (Following the hearing, the Board will be asked whether to adopt a stay for certain provisions of the above order.)

UNCONTESTED ITEMS CALENDAR

Uncontested items are expected to be routine and noncontroversial. They will be acted upon by the Board, at one time, without discussion. If any Board Member, staff, or interested person requests that an item be removed from the Uncontested Items Calendar, it will be taken up in the regular agenda order.

LOANS AND GRANTS

3. Consideration of Authorization to Extend Eleven Local Agency Pilot Program Contracts and to Negotiate and Execute Pilot Program Contracts With Additional Agencies to Oversee Leaking Underground Tank Storage Site Investigation and Cleanup. (The Board will be asked whether to adopt a resolution (1) extending the aforementioned existing pilot program contracts and (2) authorizing negotiation and execution of new pilot program contracts.)

4. Request by the City of Corcoran for an Increase in Their Water Quality Control Fund Loan. (The Board will be asked whether to adopt a resolution approving the increase.)

WATER RIGHTS

5. Proposed Resolution Finding that Additional Time is Necessary to Determine the Effect on Instream Uses and Requiring Time Schedule for Completion of Project Studies for Application of Envirohydro, Incorporated, to Appropriate Water From Wallace Canyon Creek in Placer County. (The Board will be asked whether to adopt the proposed resolution.)

6. Proposed Resolution Approving Addition of the Stateline Erosion Control Subproject to the Subprojects List of the Lake Tahoe Remedial Erosion and Urban Runoff Control Project Under the State Assistance Program. (The Board will be asked whether to adopt the proposed resolution.)

ADMINISTRATION

7. Ratification of Resolution 88-101 Expressing Appreciation to Walter J. Bishop.

Budget

Following the Board meeting on December 15, 1988, the Board may meet to discuss budget matters. There will be no voting.

Closed Session

On December 15, 1988, the Board will be meeting in closed session to discuss personnel matters (Authorized under Government Code Section 11126(a)).